

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 16. OFFICE OF THE OMBUDSMAN - CITIZENS' AIDE

[R06-135]

PREAMBLE

1. Sections Affected

R2-16-101
R2-16-201
R2-16-203
R2-16-205
R2-16-208
R2-16-209
R2-16-210
R2-16-301
R2-16-302
R2-16-303
R2-16-304
R2-16-305
R2-16-306
R2-16-401
R2-16-403
R2-16-404
R2-16-405
R2-16-501
R2-16-502
R2-16-503

Rulemaking Action

Amend
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2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-1376(A)(3) and (A)(5)

Implementing statute: A.R.S. § 41-1376(A)(3) and (A)(5)

3. The effective date of the rules:

June 4, 2006

4. A list of all previous notices appearing in the *Register* addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 5217, December 9, 2005

Notice of Proposed Rulemaking: 12 A.A.R. 4, January 6, 2006

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Patrick M. Shannahan, Ombudsman-Citizens' Aide

Address: Office of the Ombudsman-Citizens' Aide
3737 N. 7th St., Ste. 209
Phoenix, AZ 85014

Telephone: (602) 277-7292

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Fax: (602) 277-7312
E-mail: ombuds@azoca.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

In response to its five-year review report, the Office is updating its rules to make them more clear, concise, and understandable and consistent with current Office practice.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The Office made only minor, non-substantive changes to the rules. The only economic cost is the cost of the rulemaking to the Office. The only benefit is that which results from having more clear, concise, and understandable rules.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Only minor word choice and formatting changes were made between the proposed rule and the final rule.

11. A summary of the comments made regarding the rule and the agency response to them:

The Office held an oral proceeding on February 13, 2006. No one attended. No written comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 16. OFFICE OF THE OMBUDSMAN - CITIZENS' AIDE

ARTICLE 1. GENERAL PROVISIONS

Section
R2-16-101. Definitions

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

Section
R2-16-201. Protecting the Identity of a Complainant or Witness
R2-16-203. Requirement to Close Case ~~Before~~ before Violating Confidentiality
R2-16-205. Protecting Confidential Agency Information
R2-16-208. Returning a Confidential Document to a Complainant
R2-16-209. Prohibition ~~Against~~ against Discussing Open Complaint Investigations
R2-16-210. Summaries of Closed Cases

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS

Section
R2-16-301. Exhausting Reasonable Alternatives ~~Within~~ within the Agency
R2-16-302. Inmate Complaints
R2-16-303. Resolution ~~Prior to~~ without Investigation

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- R2-16-304. Anonymous Complaints
- R2-16-305. Filing Complaints
- R2-16-306. Complaints Alleging Employee Misconduct

ARTICLE 4. CONDUCTING INVESTIGATIONS

Section

- R2-16-401. Notice
- R2-16-403. Closing Cases
- R2-16-404. Findings
- R2-16-405. Recommendations

**ARTICLE 5. ~~ACTIONS AFTER AN INVESTIGATION~~ INCORPORATING AGENCY RESPONSES INTO
REPORTS AND RECOMMENDATIONS**

Section

- R2-16-501. Preliminary Report
- R2-16-502. Final Report
- R2-16-503. Advising the Complainant

ARTICLE 1. GENERAL PROVISIONS

R2-16-101. Definitions:

In addition to the definitions provided in A.R.S. § 41-1371, the following apply in this Chapter:

1. "Complainant" means a person who files a complaint with the Office.
2. "Confidential information" means oral or written information, including a record, for which restricted access is required by ~~Federal federal~~ or Arizona law. Confidential information also includes identifying personal information a complainant or witness ~~has requested~~ requests not be disclosed.
3. "Document" means a paper or electronic record, memorandum, form, book, letter, file, drawing, map, or plat.
4. ~~"Hearing" means an investigative tool used to receive sworn testimony or to take a deposition.~~ "Misconduct" means any act or omission by an employee that constitutes a material or substantial breach of the employee's duties or obligations or that adversely affects a material or substantial interest of the employer.
5. "Office" means the Office of the Ombudsman-Citizens' Aide.
6. "Ombudsman-citizens' aide" means the person appointed to the position of ombudsman-citizens' aide under the provisions of A.R.S. § 41-1373.
7. "Photograph" means a paper or electronic photographic representation, photographic file, motion picture, video tape, microfilm, or microphotograph.

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

R2-16-201. Protecting the Identity of a Complainant or Witness

~~When a complainant or witness requests that their identity be protected, the~~ The Office shall not release to an agency, the public, or anyone else, information that reveals the person's identity to an agency, the public, or anyone else, of a complainant or witness without the person's permission from the complainant or witness.

R2-16-203. Requirement to Close Case ~~Before before~~ Violating Confidentiality

The Office shall ~~close stop~~ and close a case an investigation and close a case if it cannot proceed further without ~~revealing the identity of releasing identifying information about~~ a complainant who ~~has~~ requested confidentiality. ~~Before closing stopping~~ the investigation and closing the case for this reason, the Office shall ask the complainant for permission to release identifying information.

R2-16-205. Protecting Confidential Agency Information

The Office shall give confidential information received from an agency the same degree of protection ~~by the Office~~ as provided by the agency ~~itself~~. The Office shall not release confidential agency information to the complainant, or any other person, without the agency's prior authorization, unless ordered by a court or other lawful authority.

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R2-16-208. Returning a Confidential Document to a Complainant

~~The~~ When requested, the Office shall return a confidential document received from a complainant ~~only~~ to the complainant; ~~The Office shall not release a confidential document to anyone other than the complainant unless the complainant provides written authorization for release of the document to a third party or the Office determines that the document was not lawfully in the possession of the complainant.~~

R2-16-209. Prohibition ~~Against~~ ~~against~~ Discussing Open Complaint Investigations

The Office shall not discuss ~~an open complaint investigations~~ investigation of the Office with the general public or the media.

R2-16-210. Summaries of Closed Cases

The Office shall make available to the public a summary of a closed case if the Office determines that the summary will assist in the management of a state government program, ~~to~~ respond to an inquiry about the performance of a state program, or ~~to~~ inform the public about the activity and performance of the Office. The ~~summary~~ Office shall ~~not~~ ensure that the summary does not disclose identifying information about a complainant or witness whose identity is protected, confidential investigator notes, or confidential information received from an agency.

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS

R2-16-301. Exhausting Reasonable Alternatives ~~Within~~ within the Agency

- A. The Office shall make inquiry of the complainant and the agency to determine ~~that whether the a~~ complainant has exhausted all reasonable alternatives to resolve a complaint within ~~the an~~ agency before initiating an investigation.
- B. If the complainant has not made a reasonable effort to resolve the complaint within the agency, the Office shall refer the complainant to the appropriate person or office within the agency and provide the complainant information about available steps to resolve the complaint.
- C. The ~~office~~ Office shall defer action in a matter that is being litigated in the courts or is the subject of a current formal administrative procedure unless the ombudsman-citizens' aide determines that immediate ~~investigation action~~ is necessary to protect the public health, safety, or welfare.

R2-16-302. Inmate Complaints

In accordance with A.R.S. § 41-1377, the Office shall refuse ~~complaints to investigate a complaint~~ filed by a person in the custody of the Department of Corrections. ~~This refusal shall include complaints filed by another person on behalf of an inmate, or concerning a rule or substantive policy statement concerning about inmates.~~

R2-16-303. Resolution ~~Without~~ without Investigation

If a complaint can be resolved quickly by mutual agreement, the Office shall attempt to resolve the complaint informally, without resorting to an investigation.

R2-16-304. Anonymous Complaints

The Office shall ~~decline to not~~ investigate an anonymous ~~complaints~~ complaint. ~~If the Office receives unless facts of the matter from an anonymous source that are compelling and can be reasonably independently verified, the Office may investigate the matter if it is within the scope of A.R.S. § 41-1377.~~

R2-16-305. Filing Complaints

- A. A complaint against ~~a state an~~ agency shall be filed with the Office ~~in writing, in person, or by the U. S. Postal Service, by~~ telephone, ~~by~~ electronic facsimile, or ~~by~~ electronic mail.
- B. A complaint that alleges ~~breach of duty, misconduct, or discourtesy by an officer or a state employee of an agency~~ shall be filed with the Office in writing, and signed by the complainant, and filed with the Office in person or by the U. S. Postal Service or electronic facsimile.

R2-16-306. Complaints Alleging Employee Misconduct

- A. Before investigating an allegation of misconduct by a state employee, the Office shall provide written notice of the pending investigation to the employee and the chief executive officer of the employee's agency.
- B. If an investigation of an allegation of misconduct by a state employee results in a preliminary report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the preliminary report before submitting the preliminary report to the agency and shall include the employee's written response, if any, with the preliminary report that is forwarded to the agency.
 - 1. This ~~preliminary~~ consultation with the employee shall be confidential and shall not be publicly disclosed.
 - 2. The employee shall have 15 working days to respond to the preliminary report, unless the ombudsman - citizens' aide believes a 15-day delay will cause significant harm ~~or damage~~.
 - 3. An employee may request an extension ~~to the of~~ time in which to respond to ~~a the~~ preliminary report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens' aide believes an extension ~~would will~~ cause significant harm ~~or damage~~.

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C. If an investigation of an allegation of misconduct by a state employee results in a final report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the final report before submitting the final report to the agency and shall include the employee's written response, if any, with the final report that is forwarded to the agency.

1. The employee shall have 15 working days to respond to the final report, unless the ombudsman - citizens' aide believes a 15-day delay will cause significant harm.
2. An employee may request an extension of time in which to respond to the final report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens' aide believes an extension will cause significant harm.

ARTICLE 4. CONDUCTING INVESTIGATIONS

R2-16-401. Notice

~~When it will not compromise the effectiveness of an investigation, the Office shall exercising rights~~ exercise the right of access under the provisions of A.R.S. § 41-1378, ~~whenever possible, and not deemed to compromise the effectiveness of an Office investigation, by giving the agency at least 10 days prior notice shall be given by the Office to the agency concerning information needs, the intent to conduct interviews, or requirements to view necessary records before conducting interviews, examining necessary records, or requiring the production of information.~~ An agency may request an extension to this period for a compelling reason. The ombudsman-citizens' aide shall grant a request for extension unless the ombudsman-citizens' aide believes a delay ~~would~~ will cause significant harm or damage.

R2-16-403. Closing Cases

The Office may close a case for any of the following reasons:

1. Discontinued. The ombudsman-citizens' aide determines that an investigation should be terminated before the investigation is completed because:
 - a. Disclosure of the complainant's identity is necessary to enable full investigation and the complainant refuses to allow the disclosure;
 - b. Information or a record is requested from the complainant and the complainant fails to produce the information or record within the time specified by the Office;
 - c. The complainant withdraws the complaint;
 - d. The complaint relates to a matter that has become the subject of an administrative or judicial proceeding;
 - e. The Office forwards ~~a~~ the complaint to an appropriate prosecutor because it involves possible criminal activity; or
 - f. The ombudsman-citizens' aide determines there is other good cause not to proceed with an investigation-;
2. Closed - ~~Not Substantiated~~ not substantiated. ~~The ombudsman-citizens' aide determines that the agency performed appropriately or is not able to substantiate that the agency performed inappropriately. Following an investigation, the ombudsman-citizens' aide makes a finding that the allegations in the complaint are not substantiated;~~
3. Closed - ~~Complaint Resolved~~ complaint resolved (before preliminary report). ~~The Following an investigation, the ombudsman-citizens' aide determines that the complaint has merit, either wholly or in part, and, before a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the agency and the ombudsman-citizens' aide-;~~
4. Closed - ~~Complaint Resolved~~ complaint resolved (after preliminary report). ~~The Following an investigation, the ombudsman - citizens' aide determines that the complaint has merit, either wholly or in part, and, after a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the agency and ombudsman-citizens' aide-;~~
5. Closed - ~~Complaint Unresolved~~ complaint unresolved. ~~The Following an investigation, the ombudsman - citizens' aide determines that the complaint has merit, either wholly or in part, and the agency does not accept the recommendations of the ombudsman - citizens' aide- ; or~~
6. Other. ~~A case is closed for a reason that does not meet 1 of the other criteria for closure~~ Any other reason the Office determines requires that a complaint be closed.

R2-16-404. Findings

The Office shall ~~refer to~~ make one of the following findings in an investigative report:

1. ~~Justified- Substantiated~~. The investigation establishes that the administrative act did occur and the complainant's criticism of the administrative act is valid.
2. Partially ~~justified- substantiated~~.
 - a. In a complaint having multiple allegations, the investigation establishes that at least ~~1-one~~ one allegation is ~~justified~~ substantiated and at least ~~1-one~~ one allegation is not ~~justified~~ substantiated or indeterminate; or
 - b. The investigation establishes there is shared fault between the complainant and agency.
3. Not ~~justified- substantiated~~. The investigation establishes that:
 - a. The administrative act did not occur; or

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- b. The administrative act occurred, but the complainant's criticism of the administrative act is not valid.
- 4. Indeterminate - The investigation does not provide sufficient evidence for the Office to determine conclusively:
 - a. Whether the administrative act occurred; or
 - b. If the administrative act occurred, whether the complainant's criticism of the administrative act is valid.

R2-16-405. Recommendations

- A. In accordance with A.R.S. §§ 41-1376 and 41-1379, the Office shall recommend a resolution to a complaint when a completed investigation results in a finding of ~~"justified" or "partially justified."~~ "substantiated" or "partially substantiated."
- B. The Office shall not recommend that a specific employee disciplinary action ~~to~~ be imposed.

ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS

R2-16-501. Preliminary Report

- A. Before issuing an opinion or recommendation, the Office shall consult with the agency and send a confidential preliminary report to the agency.
- B. In accordance with A.R.S. § 41-1379, the Office or ~~affected~~ agency may share a preliminary report with other state officials only if it is necessary to resolve the complaint, but shall not publicly disclose the contents of the preliminary report.
- C. An agency may seek modification of an opinion or recommendation presented in the preliminary report by ~~submitting a written~~ including a request for modification in a written response submitted within 15 working days of ~~the date of receipt of receiving the preliminary report.~~
- D. An agency may request, for a compelling reason, an extension to the time in which to respond. The Office shall grant an agency's request for extension, unless the ombudsman-citizens' aide believes an extension ~~would~~ will cause significant harm or damage.
- E. ~~If an agency seeks~~ The Office shall consider an agency's request for modification of an opinion or recommendation, the Office shall consider the agency's request before it prepares the final report and shall notify the agency of the acceptance or rejection of ~~that the~~ request within 15 working days of receiving the request.
- F. If an agency does not request modification, the preliminary report becomes the final report 15 working days after ~~the date~~ the agency ~~received~~ receives the preliminary report.

R2-16-502. Final Report

- A. After the Office receives an agency's response, if any, to a preliminary report and makes accepted modifications to the preliminary report, or if no timely response is filed, the Office shall send the final report to the chief executive officer of the ~~affected~~ agency.
- B. ~~If requested to the Office~~ requests that an agency respond to a final report, the ~~affected~~ agency shall respond to the Office, in writing, within 20 working days ~~from the date of receipt of~~ after receiving the final report. The agency shall include in the response ~~shall advise the Office of the agency's decision to accept or reject a recommendation.~~ If the agency accepts a recommendation, the ~~response~~ agency shall specify a date by which the recommendation will be implemented.
- C. If the ombudsman-citizens' aide determines that an early response to a final report is necessary to protect the public health, safety, or welfare, the Office shall require an agency to respond on a date sooner than 20 working days. Additionally, the ombudsman - citizens' aide may extend a response period for good cause at the request of an agency.

R2-16-503. Advising the Complainant

- A. The Office shall provide a final response to ~~the a~~ complainant. If requested by the complainant, the Office shall provide the final response in writing.
 - ~~1. If a complaint is resolved through formal procedures, the Office shall respond in writing;~~
 - ~~2. If a complaint is resolved through informal procedures, the Office shall respond by either telephone or in writing.~~
- B. Before releasing a final report to any person not authorized to receive confidential information, the Office shall purge the final report of any confidential information.

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TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

[R06-136]

PREAMBLE

- 1. Sections Affected**

Article 3	<u>Rulemaking Action</u>
R3-4-301	Amend
R3-4-301	Repeal
R3-4-302	New Section
R3-4-303	Repeal
R3-4-304	Repeal
R3-4-305	Repeal
R3-4-306	Repeal
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 3-107(A)(1), 3-201.01(A)
Implementing statutes: A.R.S. §§ 3-212, 3-217
- 3. The effective date of the rules:**

June 4, 2006
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 5221, December 27, 2004
Notice of Proposed Rulemaking: 11 A.A.R. 4496, November 14, 2005
Notice of Public Information: 11 A.A.R. 4876, November 18, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Rebecca A. Nichols, Rules Analyst
Address: Arizona Department of Agriculture
1688 W. Adams, Room 235
Phoenix, AZ 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: rmichols@azda.gov
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**

This rulemaking consolidates six rules into one. Outdated references to the State Entomologist and the Commission of Agriculture and Horticulture are deleted. Definitions are amended and added as needed. New certification terminology is used. The types of nursery certifications are modified, and expiration dates are given for each certification type. The Department's actions when pests are detected during inspections are specified. Nursery certification inspection fees are raised to the statutory cap of \$50. References to fees for laboratory analysis are removed. The Department initiated this rulemaking in response to commitments made in the 2004 Five-year-review report of the Plant Services Division rules.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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9. The summary of the economic, small business, and consumer impact:

A. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to educating staff and the regulated community regarding the new regulations.

B. *Political Subdivision.*

None.

C. *Businesses Directly Affected by the Rulemaking.*

Nurseries electing to participate in the voluntary nursery certification program will benefit by having all certification options available to them in one concise rule. Nurseries electing to participate in the voluntary nursery certification program will pay \$50 for each type of certification.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

A number of minor grammatical and formatting changes were made at the request of the G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

One comment from the public was made on the Proposed Rulemaking.

Comment Submitted by:

Robert Dahl, Section Chief, Plant Protection, Wisconsin Dept. of Agriculture

His Position:

Mr. Dahl is in support of the law, but states it should require all nurseries to be certified, rather than have certification be voluntary. By stopping short of certifying all nurseries, he believes it will not effectively protect Arizona nursery stock.

Agency Response:

A general response was sent to him thanking him for his comments, and to let him know the comment would be reviewed and placed on the record.

The agency agrees with Mr. Dahl, but does not have the support or resources to implement a state-wide inspection program at this time. This is a first step to changing the culture of the industry and interested parties in Arizona.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION**

ARTICLE 3. NURSERY ~~RULES~~ CERTIFICATION PROGRAM

Section

- | | |
|-----------|--|
| R3-4-301. | Special nursery certification; definitions <u>Nursery Certification</u> |
| R3-4-302. | Special nursery certification; Arizona certified nursery inspections <u>Repealed</u> |
| R3-4-303. | Special nursery certification; ozonium root rot inspection <u>Repealed</u> |
| R3-4-304. | Special nursery certification; other certification inspections <u>Repealed</u> |
| R3-4-305. | Special nursery certification; application <u>Repealed</u> |
| R3-4-306. | Special nursery certification inspection; denial, revocation, and suspension of certification <u>Repealed</u> |

ARTICLE 3. NURSERY ~~RULES~~ CERTIFICATION PROGRAM

R3-4-301. ~~Special nursery certification; definitions~~ Nursery Certification

In this Article, unless the context otherwise requires:

1. "Certificate" means a document issued by the State Entomologist or by an inspector of the Commission stating that

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~~an agricultural commodity complies with the criteria set forth by an agricultural agency of any state, county, or commonwealth.~~

2. ~~“Common pest” means a pest, weed or disease which is not under state or federal quarantine or eradication program and is of general distribution within this state.~~
3. ~~“Injurious plant pests, weeds, and diseases” means any serious pest or common pest that is above the determined levels standard for common pests listed in Field Service Policy #8, dated March 24, 1988, incorporated herein by reference and on file with the Office of the Secretary of State.~~
4. ~~“Laboratory disease analysis” means the processing of a sample so that any of the following examination and pathogen identification procedures may be utilized — light transmitted microscopy, culturing, inoculations, greenhouse grow out, serology, extraction, electron microscopy.~~
5. ~~“Misuse or misrepresentation of certification” means reproduction of certificates not allowed pursuant to this Article without written permission of the Commission, alteration of certificates, use of certificates to represent noncertified plant material, use of certificates to imply Arizona origin in order to avoid regulatory action by an agricultural official of the state, county or commonwealth scheduled to receive the nursery stock.~~
6. ~~“Nursery location” means a parcel of ground operated as one unit with one physical address, upon which nursery stock is propagated or grown for commercial purposes.~~
7. ~~“Nurseryman” means any person engaged in the production of nursery stock for commercial purposes.~~
8. ~~“Serious pest” means a pest, weed or disease under state or federal quarantine or eradication programs or a pest, weed or disease which causes crop damage or is a nuisance or public health threat and which has not been found or is of limited distribution in this state.~~
9. ~~“Special nursery certification inspection” means an inspection carried out at the request of a nurseryman for the purpose of determining whether or not a certificate can be issued.~~

A. Definitions. The following terms apply to this Section.

“Associate Director” means the Associate Director of the Arizona Department of Agriculture’s Plant Services Division.

“Certificate” means a document issued by the Director, Associate Director or by a Department inspector stating that the nursery stock has been inspected and complies with the criteria set forth by an agricultural agency of any state, county, or commonwealth.

“Certificate holder” means a person who holds a certificate issued in accordance with this Section.

“Collected nursery stock” means nursery stock that has been dug or gathered from any site other than a nursery location.

“Commercially clean” means nursery stock offered for sale is in a healthy condition and, though common pests may be present, they exist at levels that pose little or no risk.

“Common pest” means a pest, weed, or disease that is not under a state or federal quarantine or eradication program and is of general distribution within the state.

“Director” means the Director of the Arizona Department of Agriculture.

“General nursery stock inspection certification” means an inspection carried out at the request of a person for the purpose of meeting the general nursery inspection requirements of another state.

“Nursery location” means real property with one physical address, upon which nursery stock is propagated, grown, sold, distributed, or offered for sale.

“Quarantine pest” means an economically important pest that does not occur in the state or that occurs in the state but is not widely distributed or is being officially eradicated.

“Single shipment nursery stock inspection certification” means a visit to a single location by a Department inspector to certify one or more shipments of nursery stock for compliance with the quarantine requirements of the receiving state, county, or commonwealth.

B. General nursery stock inspection certification. A person may apply for general nursery stock inspection certification by submitting to the Department the application described in subsection (E) for each nursery location. The applicant shall submit a \$50 inspection fee to the Department at the time of inspection for each nursery location. Each nursery location shall be inspected and certified separately. An application for initial certification may be submitted at any time. A certificate will be valid for one year, and may be renewed. A renewal application shall be submitted each year by February 15.

1. The Department shall issue a general nursery stock inspection certificate to the applicant if, following a Department inspection, the nursery stock is found free of quarantine pests, and commercially clean of common pests that are adversely affecting the nursery stock.
 - a. The Department shall only certify nursery stock that is found free of quarantine pests. The applicant shall not remove from the nursery any nursery stock that is found infested with a quarantine pest until a Department inspector determines that the pest has been eliminated.

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6. Applicant's signature and date of signature.
- F.** Based upon the circumstances of each case, the Associate Director may:
 1. Refuse to issue a certificate if, after inspection, the Associate Director determines that an applicant has not met a requirement for certification.
 2. Revoke a certificate for a violation of a condition of the certificate.
 3. Suspend, for a period of up to 90 days, a certificate for misuse or misrepresentation related to the certificate.
 4. Refuse to issue or suspend a certificate issued under this Section if the applicant or certificate holder refuses to provide the Department with documents that demonstrate the ownership, origin, or destination of nursery stock presented for certification.

R3-4-302. ~~Special nursery certification; Arizona certified nursery inspections~~ Repealed

- A.** ~~Inspection and fee. Upon written application from a nurseryman and payment of an annual \$30 fee per nursery location, an inspector of the Commission shall annually inspect a representative sample of all nursery stock at each nursery location to determine if the nursery stock meets all the requirements of certification for Arizona certified nurseries listed below.~~
- B.** ~~Certification requirements. To qualify as an Arizona certified nursery, a nursery shall either be pest free or comply with the following actions required in a written remedial order issued by an inspector of the Commission:~~
 1. ~~If nursery stock is found infested or infected with serious pests, it shall be quarantined until the pest has been eradicated.~~
 2. ~~If nursery stock is infested or infected with common pests at detrimental levels, it shall be kept under a treatment program. Detrimental levels of common pests are specified in Arizona Commission of Agriculture and Horticulture Field Services Policy #8 dated March 24, 1988, incorporated herein by reference and on file with the Office of the Secretary of State. The treatment program shall include the use of a pesticide registered for use in Arizona on the nursery stock, at the intervals specified on the label, or effective cultural control measures.~~
- C.** ~~Duration and use of Arizona certified nursery certificate. A current certificate declaring the nursery to be an Arizona certified nursery may be duplicated by the applicant in order to reproduce shipping labels. The expense of reproducing the certificate shall be borne by the applicant. The certificate shall be valid for 12 months from the date of issuance, unless revoked as provided in Section R3-4-306(C) or (D).~~
- D.** ~~A nursery does not have to be an Arizona certified nursery to do business in the state of Arizona.~~

R3-4-303. ~~Special nursery certification; ozonium root rot inspection~~ Repealed

- A.** ~~Inspection and fee. Upon written application from a nurseryman, an inspector of the Commission shall, for a fee of \$50 per nursery location, perform an inspection as is necessary to determine whether an ozonium root rot certification can be issued.~~
- B.** ~~Certification requirements. Ozonium root rot certification requirements are specified in Arizona Commission of Agriculture and Horticulture Field Services Policy #7 dated June 24, 1987, incorporated herein by reference and on file with the Office of the Secretary of State.~~
- C.** ~~Duration and use of ozonium root rot certificate:~~
 1. ~~Ozonium root rot certification shall remain valid unless revoked as provided in Section R3-4-306(C) or (D).~~
 2. ~~A certificate issued by the Commission cannot be reproduced without written permission of the Commission.~~

R3-4-304. ~~Special nursery certification; other certification inspections~~ Repealed

- A.** ~~Inspection and fee. Upon the written request of a nurseryman and payment of the appropriate fee as specified below, the Commission shall perform those special nursery inspections for pests, weeds or diseases not otherwise specified in Section R3-4-302 or R3-4-303. The category of inspection selected and the plant pest, weed, or disease involved shall be determined by the certification requirements of the state, county or commonwealth which is scheduled to receive shipments of Arizona nursery stock. These requirements are in addition to the minimum shipping requirements applicable to Arizona certified nurseries:~~
 1. ~~Shipment inspection. For an inspection which requires no more than one visit by an inspector to certify nursery stock scheduled to be transported by vehicle, the fee shall be \$10 per vehicle. The shipment shall leave for its destination within five working days following inspection or a new certification shall be required.~~
 2. ~~Entire nursery location. For an inspection necessary to certify an entire nursery location, the fee shall be \$30 per nursery location.~~
 3. ~~Laboratory inspection. Fees for an inspection requiring laboratory disease analysis shall be assessed according to the following schedule. For the purpose of this rule, an inspection for laboratory disease analysis shall be the examination of one sample:~~
 - a. ~~The fee for inspection of a sample for bacterium shall be \$50.~~
 - b. ~~The fee for inspection of a sample for nematodes shall be \$15.~~
 - e. ~~The fee for inspection of a sample for fungus shall be \$15.~~
 - d. ~~The fee for laboratory disease analysis which exceeds the capability of the Commission's laboratory and must be analyzed by an outside laboratory shall be the fee charged by the outside laboratory and all shipping costs. This fee shall not exceed \$50 per sample.~~

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4. ~~Partial nursery inspection. When the agricultural agency of the receiving state, county or commonwealth does not require the certification of an entire nursery location, nor certification of a shipment, nor laboratory disease analysis, but does require the inspection of a portion of the nursery where the plants or things to be certified are located, the charge shall be \$20 per partial nursery inspection.~~
5. ~~Inspection of out of state shipments resulting in recertification. Plant shipments which have entered Arizona and have not lost their identity as a shipment, were not exposed to infection or infestation while in Arizona, and upon arrival in Arizona have already met the certification requirements established by the agricultural agency of the state, county or commonwealth scheduled to receive the shipment, may be certified for reshipment without fee.~~
- B.** ~~Certification requirements. The standard for certification requirements shall be determined by the agricultural agency of the state, county or commonwealth requiring certification of Arizona nursery stock. Copies of these requirements will be given to any nurseryman requesting certification.~~
- C.** ~~Duration and use of certification.~~
 1. ~~Certification is valid for one year unless revoked as provided in Section R3-4-306(C) or (D); or unless the certification requirements, set forth by an agricultural agency of the state, county or commonwealth scheduled to receive the Arizona nursery stock, specify a shorter or longer duration.~~
 2. ~~A certificate issued by the Commission cannot be reproduced without permission of the Commission.~~

R3-4-305. Special nursery certification; application Repealed

- A.** ~~The nurseryman may make written application for ozonium root rot inspection on a form approved by the Commission. The form shall contain the following:~~
 1. ~~Name of the applicant;~~
 2. ~~The applicant's mailing address and telephone number;~~
 3. ~~The nursery location, identified by name, quantity of land, and location (county, range, township, and section);~~
 4. ~~A section in which to specify the certification method requested.~~
 5. ~~Applicant's signature and date of application.~~
- B.** ~~The nursery may make a written application for special nursery certification inspections, which does not include ozonium root rot inspection, on a form approved by the Commission. The form shall contain the following:~~
 1. ~~Applicant's name, nursery name, mailing address, and telephone number;~~
 2. ~~Location at which inspection is to be made by legal description or physical address;~~
 3. ~~Quantity of land;~~
 4. ~~A section in which to specify the state, county, or commonwealth of planned destination and the type of certification requested;~~
 5. ~~Applicant's signature and date of signature.~~

R3-4-306. Special nursery certification inspection; denial, revocation, and suspension of certification Repealed

- A.** ~~The State Entomologist or an inspector of the Commission shall issue the appropriate certification if, after inspection, it is determined that all certification requirements are met.~~
- B.** ~~The State Entomologist or an inspector of the Commission shall deny the issuance of a certification if, after inspection, it is determined that the requirements for certification are not met.~~
- C.** ~~The Commission may revoke a certification for any violation of any of the conditions of that certification.~~
- D.** ~~The Commission may suspend, for a period not to exceed 90 days, any certification for any misuse or misrepresentation of that certification.~~

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

[R06-137]

PREAMBLE

1. **Sections Affected**
R3-11-105
- Rulemaking Action**
Amend
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-2207(9)
Implementing statutes: A.R.S. §§ 32-2244, 32-2250, 32-2272, 32-2273
3. **The effective date of the rules:**
June 4, 2006
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 5333, December 16, 2005
Notice of Proposed Rulemaking: 12 A.A.R. 10, January 6, 2006
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Jenna Jones, Executive Director
Address: 1400 W. Washington, Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-1739
Fax: (602) 364-1039
E-mail: jenna.jones@vetbd.state.az.us
6. **An explanation of the rule, including the agency's reason for initiating the rule:**
The purpose of this rulemaking is to increase the Board's fees for issuance of a certificate under A.R.S. §§ 32-2244 and 32-2250 in an odd-numbered year from \$30 to \$50 and in an even-numbered year from \$15 to \$25 and increase the fee for renewal of premises license under A.R.S. §§ 32-2272 and 32-2273 from \$75 to \$200. The Board has not raised these fees since 1998.

The Board is responsible for overseeing the practice of veterinary medicine in Arizona by evaluating applications for a license to practice veterinary medicine in Arizona, for a veterinary medical premises license, or for a certificate to work as a certified veterinary technician; ensuring that licensees and certificate holders conform to the Board's statutes and rules; investigating complaints; and applying appropriate disciplinary action to licensees and certificate holders who violate the Board's statutes and rules. The Board performs these oversight and regulatory functions to protect the health and safety of the general public as well as the welfare of animals. From 2000 to 2001 the Board's operating costs began to exceed the revenues it receives through its licensing fees. The Board has determined that it must increase its fees in order to continue its oversight and regulatory functions.
7. **A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The Board did not review or rely on any study.
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
9. **The summary of the economic, small business, and consumer impact:**
Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

The rulemaking impacts the Board, veterinary medical premises licensees, certified veterinary technician applicants, consumers seeking veterinary services, and the Board. The Board bears moderate costs for writing the rule and related economic, small business, and consumer impact statement and mailing the new rule to interested persons. The

Notices of Final Rulemaking

Board's administrative costs to implement the rule are minimal. The Board will realize a substantial increase in revenues from the increased fees. It is necessary to raise these fees to continue the Board's licensing and oversight functions.

A veterinary medical premises licensee will be minimally affected by the increase in the license renewal fee.

The increased cost for issuance of a certificate in either an even-numbered year or an odd-numbered year is minimal for each applicant.

A licensee may choose to pass the cost of the increase to consumers of veterinary medical services. However, consumers benefit from the Board's continuing oversight because the Board's mission is to ensure that only competent veterinarians practice and certified veterinary technicians work in Arizona by protecting consumers from improper or inadequate delivery of veterinary medical services.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The Board made no changes to the rule.

11. A summary of the comments made regarding the rule and the agency response to them:

The Board did not receive any comments.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

ARTICLE 1. GENERAL PROVISIONS

Section
R3-11-105. Fees

ARTICLE 1. GENERAL PROVISIONS

R3-11-105. Fees

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change

B. Veterinary technician fees are as follows:

1. No change
2. Certificate issued in odd-numbered year - ~~\$30.00~~ \$50.00
3. Certificate issued in even-numbered year - ~~\$15.00~~ \$25.00
4. No change
5. No change
6. No change

C. Veterinary medical premises fees are as follows:

Notices of Final Rulemaking

1. No change
2. No change
3. License renewal - ~~\$75.00~~ \$200.00
4. No change
5. No change
- D. No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
- E. No change
- F. The Board shall charge \$5.00 per copy of the veterinary statutes and rules. A licensee may obtain ~~+~~ one free copy of the veterinary statutes and rules each renewal period.
- G. No change
- H. No change

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

[R06-133]

PREAMBLE

1. **Sections Affected**
R4-6-604
- Rulemaking Action**
Amend
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-3253(A)(1)
Implementing statute: A.R.S. §§ 32-3253(A)(1) and 32-3311(C)
3. **The effective date of the rules:**
June 4, 2006
4. **A list of all previous notices appearing in the *Register* addressing the final rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 2447, July 1, 2005
Notice of Proposed Rulemaking: 11 A.A.R 2790, July 29, 2005
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Sherry D. Blatner
Address: 3443 N. Central Ave., Suite 1700
Phoenix, AZ 85012
Telephone: (602) 542-1889
Fax: (602) 364-0890
E-mail: sherry.blatner@bbhe.state.az.us
6. **An explanation of the rule, including the agency's reason for initiating the rule:**
The Board initiated this rulemaking at the request of the Arizona Association for Marriage and Family Therapists to provide clarity to an applicant for licensure as a marriage and family therapist regarding clinical supervision needed under A.R.S. § 32-3311(C). The requirement of 200 hours of clinical supervision in the area of marriage and family therapy is amended to include the provision that at least 120 of the hours address issues focusing on couples and families. Without the revised language, it is possible that an applicant might present 200 hours of clinical supervision for therapy related only to individuals. The Board believes it is essential that licensure as a Marriage and Family Thera-

Notices of Final Rulemaking

pist ("LMFT") reflect that an applicant received supervision of therapy provided to couples and families, as well as individuals.

The change is also aligned with an earlier amendment to R4-6-603(2)(a). In that rule, an applicant for a LMFT license must complete 3,200 hours of supervised work experience that includes a minimum of 1,600 hours of direct client contact. Of the 1,600 hours, 1,000 shall be with couples and families and 600 may be with individuals and groups.

7. **A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

9. **The summary of the economic, small business, and consumer impact:**

This rulemaking will affect applicants for licensure as a marriage and family therapist. An applicant and the applicant's clinical supervisor will need to ensure that at least 120 of the 200 hours of clinical supervision address issues focusing on couples and families. The Board believes that this focus is already occurring and expects the rule to provide certainty to both the clinical supervisor and the supervisee of the Board's licensure requirement.

10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

At R4-6-604(A), clinical supervision was modified to require 120 hours focusing on couples and families; the term "relational systems" was deleted in order to provide clarification to the requirement.

At R4-6-604(E)(2)(a), the phrase "licensed to practice psychotherapy" was substituted for the phrases "licensed" and "license...to practice behavioral health." This provides a more precise understanding of the license type that the Marriage and Family Therapy Committee finds acceptable when granting an exemption for a clinical supervisor. The change merely clarifies the language used in the proposed rulemaking.

Minor grammatical changes were made at the request of Council staff.

11. **A summary of the comments made regarding the rule and the agency response to them:**

An oral proceeding was held on August 30, 2005. There were no attendees.

No comments were received by the Board.

12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

13. **Incorporations by reference and their location in the rules:**

None

14. **Was this rule previously made as an emergency rule?**

No.

15. **The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

ARTICLE 6. MARRIAGE AND FAMILY THERAPY

Section

R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure

ARTICLE 6. MARRIAGE AND FAMILY THERAPY

R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure

- A. During the supervised work experience required in R4-6-603, an applicant for licensure as a marriage and family therapist shall receive a minimum of 200 hours of clinical supervision in no less than 24 months and at least 120 of the hours shall address issues focusing on couples and families.
- B. An applicant for licensure as a marriage and family therapist shall ~~demonstrate~~ ensure that the applicant's clinical supervi-

Notices of Final Rulemaking

sor submits a performance evaluation on forms available from the Agency. The Board shall not license an applicant unless the performance evaluation demonstrates satisfactory performance in the following areas: assessment, diagnostics, individual and group psychotherapy, referrals, personal integrity, appropriate use of supervision, insight into client's problems, objectivity, ethics, concern for welfare of clients, responsibility, boundaries, recognition of own limits, and confidentiality. ~~by having the applicant's clinical supervisor submit a performance evaluation on forms available from the Agency.~~

- C. The time span covered by the performance evaluation shall be the same ~~as that for the period as the supervised work experience requirement under R4-6-603.~~
- D. Clinical supervision of an applicant for marriage and family therapist licensure shall be provided by a marriage and family therapist licensed in Arizona.
- E. An applicant may submit a written request to the marriage and family therapy credentialing committee for an exemption from the requirement of subsection (D).
 - 1. The request shall include the name of the behavioral health professional proposed by the applicant ~~to act as the clinical supervisor; and~~ a copy of the proposed clinical supervisor's graduate degree transcript and curriculum vitae, ~~and~~ The applicant shall provide any additional documentation requested by the committee.
 - 2. The marriage and family therapy credentialing committee shall review the supervision exemption request to determine whether the proposed supervisor has ~~the necessary~~ education, training, and experience comparable to that of a licensed marriage and family therapist to provide supervision acceptable for marriage and family therapist licensure. If the proposed supervisor has ~~the necessary comparable~~ education, training, and experience, the marriage and family therapy credentialing committee shall grant the supervision exemption request.
 - 1-a. ~~Beginning on July 1, 2006, the~~ The marriage and family therapy credentialing committee ~~will~~ shall not grant an exemption request for clinical supervision provided in Arizona by a person not licensed to practice psychotherapy in Arizona ~~an unlicensed clinical supervisor providing clinical supervision in Arizona after July 1, 2006, except that the committee may grant an exemption may be granted by the committee~~ if the clinical supervisor holds a current active license in any state or jurisdiction to practice behavioral health psychotherapy at the independent level and is providing services pursuant to a contract or grant with the federal government under ~~the authority of 25 U.S.C. 450 - 450(n) 25 U.S.C. 450 - 450n or 25 U.S.C. 1601 - 1683.~~
 - 2-b. Beginning on July 1, 2006, the marriage and family therapy credentialing committee ~~will~~ shall not grant an exemption for clinical supervision by a substance abuse counselor.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

[R06-134]

PREAMBLE

- | | |
|---|--|
| <p>1. <u>Sections Affected</u>
 Article 2
 R4-22-212</p> | <p><u>Rulemaking Action</u>
 New Article
 New Section</p> |
| <p>2. <u>The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
 Authorizing statute: A.R.S. § 32-1803(C)(1)
 Implementing statute: A.R.S. § 41-1072 et seq.</p> | |
| <p>3. <u>The effective date of the rules:</u>
 June 4, 2006</p> | |
| <p>4. <u>A list of all previous notices appearing in the Register addressing the final rule:</u>
 Notice of Rulemaking Docket Opening: 11 A.A.R. 2980, August 5, 2005
 Notice of Rulemaking Docket Opening: 11 A.A.R. 5128, December 2, 2005
 Notice of Proposed Rulemaking: 12 A.A.R. 166, January 20, 2006</p> | |

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5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Jack Confer, Executive Director
Address: Board of Osteopathic Examiners in Medicine and Surgery
9535 E. Doubletree Ranch Rd.
Scottsdale, AZ 85258-5539
Telephone: (480) 657-7703
Fax: (480) 657-7715
E-mail: Jack.confer@azdo.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

To comply with A.R.S. § 41-1073, the Board is establishing the time-frame during which the Board will either grant or deny each type of license that it issues.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The Board will bear the cost of establishing and complying with the time-frame rule but, these costs result from complying with statute. If the Board fails to act on an application within the time-frame, the Board is required under A.R.S. § 41-1077 to refund any fees paid, excuse unpaid fees, and pay a penalty for each month after expiration of the time-frame until it acts on the application.

Individuals who apply for a license from the Board will have no costs as a result of the rulemaking. They will benefit from knowing the time within which the Board will act on their applications.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Only minor word choice and formatting changes were made between the proposed rule and the final rule.

11. A summary of the comments made regarding the rule and the agency response to them:

The Board received no written or oral comments regarding the rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

ARTICLE 2. LICENSING AND TIME-FRAMES

Section

R4-22-212. Licensing Time-frames

Arizona Administrative Register / Secretary of State
Notices of Final Rulemaking

ARTICLE 2. LICENSING AND TIME-FRAMES

R4-22-212. Licensing Time-frames

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for each type of license issued by the Board is listed in Table 1. An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frames by no more than 25 percent of the overall time-frame listed in Table 1.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license issued by the Board is listed in Table 1. The administrative completeness review time-frame for a particular license begins on the date the Board receives an application package for that license.
- 1.** If the application package is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review and overall time-frames are suspended from the postmark date on the notice until the date the Board receives the missing document or incomplete information.
 - 2.** If the application package is complete, the Board shall send to the applicant a written notice of administrative completeness.
 - 3.** If the Board grants or denies a license during the administrative completeness review time-frame, the Board shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072(3) for each type of license issued by the Board is listed in Table 1. The substantive review time-frame begins on the postmark date of the Board's notice of administrative completeness.
- 1.** During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The substantive review and overall time-frames are suspended from the postmark date on the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
 - 2.** The Board shall send a written notice of approval to an applicant who meets the requirements of A.R.S. Title 32, Chapter 17 and this Chapter.
 - 3.** The Board shall send a written notice of denial to an applicant who fails to meet the requirements of A.R.S. Title 32, Chapter 17 or this Chapter.
- D.** The Board shall administratively close an applicant's file if the applicant fails to submit the information or documentation required under subsection (B)(1) or (C)(1) within 360 days from the date on which the application package was originally submitted. If an individual whose file is administratively closed wishes to be licensed, the individual shall file another application package and pay the application fee.
- E.** Under A.R.S. § 41-1073(E)(2), the Board is not establishing a time-frame for issuance of the following licenses because the Board shall grant or deny each license within seven days after receipt of an application:
- 1.** Ninety-day extension of locum tenens registration under A.R.S. § 32-1823(C);
 - 2.** Waiver of continuing education requirements for a particular period under A.R.S. § 32-1825(C);
 - 3.** Extension of time to complete continuing education requirements under A.R.S. § 32-1825(C);
 - 4.** Annual registration of an approved internship, residency, clinical fellowship program, or short-term residency program under A.R.S. § 32-1826(A)(6);
 - 5.** Five-day educational training permit under A.R.S. § 32-1828; and
 - 6.** Extension of one-year renewable training permit under A.R.S. § 32-1829(B).
- F.** In computing any time-frame prescribed in this Section, the day of the act or event that begins the time-frame is not included. The computation includes intermediate Saturdays, Sundays, and official state holidays. If the last day of a time-frame falls on a Saturday, Sunday, or official state holiday, the next business day is the time-frame's last day.

Table 1. Time-frames (in days)

<u>Type of License</u>	<u>Statutory Authority</u>	<u>Overall Time-frame</u>	<u>Administrative Completeness Time-frame</u>	<u>Substantive Review Time-frame</u>
<u>License</u>	<u>A.R.S. § 32-1822</u>	<u>120</u>	<u>30</u>	<u>90</u>
<u>License Renewal</u>	<u>A.R.S. § 32-1825</u>	<u>120</u>	<u>30</u>	<u>90</u>
<u>90-day Locum Tenens Registration</u>	<u>A.R.S. § 32-1823</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>One-year Renewable Training Permit</u>	<u>A.R.S. § 32-1829(A)</u>	<u>60</u>	<u>30</u>	<u>30</u>

Notices of Final Rulemaking

<u>Short-term Training Permit</u>	<u>A.R.S. § 32-1829(C)</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>One-year Training Permit at Approved School or Hospital</u>	<u>A.R.S. § 32-1830</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>Two-year Teaching License</u>	<u>A.R.S. § 32-1831</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>Registration to Dispense Drugs and Devices</u>	<u>A.R.S. § 32-1871</u>	<u>90</u>	<u>30</u>	<u>60</u>
<u>Renewal of Registration to Dispense Drugs and Devices</u>	<u>A.R.S. §§ 32-1826(A)(11) and 32-1871</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>Authorization to Read or Interpret Mammographic Images</u>	<u>A.R.S. § 32-2842</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>Renewal of Authorization to Read or Interpret Mammographic Images</u>	<u>A.R.S. § 32-2842</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>Approval of Educational Program for Medical Assistants</u>	<u>A.R.S. § 32-1800(19)</u>	<u>60</u>	<u>30</u>	<u>30</u>

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R06-132]

PREAMBLE

- 1. Sections Affected**
R12-4-102
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 17-231
Implementing statute: A.R.S. §§ 17-332, 17-333, and 17-345
- 3. The effective date of the rules:**
June 4, 2006
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 4142, October 21, 2005
Notice of Proposed Rulemaking: 12 A.A.R. 30, January 6, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Carlos Ramírez, Rule Writer
Address: Arizona Game and Fish Department
2221 W. Greenway Rd. DORR
Phoenix, AZ 85023-4399

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Telephone: (602) 789-3288

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6. An explanation of the rule, including the agency's reason for initiating the rule:

During the First Regular Session of the 47th Arizona State Legislature, the Game and Fish Commission pursued amendments to A.R.S. § 17-333 to increase the maximum amount that may be charged for the licenses, tags, permits, and stamps listed under the statute, and to authorize new fees for new types of licenses and tags. The purpose of the legislation was to address increasing operational expenses at a time of declining agency revenues. A.R.S. §§ 17-332 and 17-345 were also amended to raise fees for duplicate licenses and tags and surcharges. The Arizona Game and Fish Department is an agency supported principally on the dedicated funds generated from the sale of these items as well as other sources. Over the past five years sales of licenses, tags, stamps and permits have steadily decreased while operational costs and Department responsibilities have increased or expanded. These costs include but are not limited to: increasing fuel prices, rising agency expenses, employee-related costs and turnover, public recreational access issues, and outdoor and wildlife programs. The agency does not receive money from the state general fund to address these costs.

In addition to these concerns, the Department is continually challenged by environmental factors that impact recreational opportunities and therefore impair the agency's revenue capabilities. The state's extended drought continues to affect wildlife habitat and populations, which requires the agency to expend considerable resources to maintain habitat and wildlife populations. The state's forests are recovering after significant damage caused by forest fires, of particular note the Rodeo-Chediski fire in 2002. Often, public access is still limited into some of these areas due to the extent of the damage and the ongoing recovery. Emerging wildlife diseases have the potential to reduce native populations and threaten the state's biological diversity as well as limit recreational opportunities, prompting the agency to adopt a more aggressive stance in monitoring for these conditions.

The Commission's objectives for this rulemaking are to generate revenue to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the regulated community. The rule prescribes new fees for the licenses, tags, stamps, and permits listed under R12-4-102 and to add new types of licenses and permits authorized by A.R.S. § 17-333. The Department is adding the following licenses and permits:

- The Class J resident family hunting license and the Class K combination resident family hunting and fishing license. The Department's objective is to promote hunting and fishing in families and youth by prescribing in rule group licenses for families at a reduced price. The fees for these licenses are based on a percentage of the fees for general hunting and fishing licenses.
- The Class L super conservation fishing license, the Class M super conservation hunting license, and the Class N combination super conservation hunting and fishing license. These licenses give the purchaser the same privileges to hunt and fish as if purchasing each license individually but at a reduced price. The Class L license combines a Class A general fishing license, a Class U urban fishing license, and a trout stamp. The Class M license combines a Class G general hunting license and any stamp authorized by the Commission. The Class N license combines a Class A general fishing license, a Class G general hunting license, a Class U urban fishing license, a trout stamp, and any stamp authorized by the Commission.

Most fees are determined by subtracting the old fee for a license tag, stamp, or permit listed in R12-4-102 (minus the surcharge under A.R.S. § 17-345, if applicable) from the recently amended statutory fee ceiling. The difference is divided by two, and that amount is then added to the old fee (minus the surcharge under A.R.S. § 17-345). An additional surcharge of \$3.00 is added if applicable under A.R.S. § 17-345. For those new licenses that have no existing fee, the Commission is prescribing the statutory maximum as the new fee. The Commission did not use these methods when determining the following fees:

- The fee for a nonresident bighorn sheep hunt permit-tag and nonpermit-tag will be increased to \$1400.
- To encourage youth hunting in this state, the Commission proposes to create four big game tag classifications for youth, both resident and nonresident, at the following fees: junior elk at \$50, junior deer at \$25, junior javelina at \$15, and junior turkey at \$10.
- The fee for a Class F, combination hunting and fishing license, for resident and nonresident youth will remain at the current fee of \$23.50. However, because the attached surcharge increased to \$3, the fee will increase to \$26.50.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review any study relevant to the rule.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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9. The summary of the economic, small business, and consumer impact:

Increased fees for the licenses, tags, stamps, and permits will most significantly affect members of the regulated community, both resident and nonresident, and the Game and Fish Department. The Department has applied a common equation to almost all the fees that are being amended, but the percentage increase is not equal. Although fees for nonresidents will increase more than residents, the agency holds that it is in its best interest to maintain opportunities for the resident community not only to generate revenue, but because residents contribute significantly through both monetary and volunteer efforts in the management of the state's wildlife resources. Increased fees for certain special licenses, such as the guide license or the taxidermist license, will likely affect individuals who receive income from those activities. However, the Department does not anticipate the fee increase will significantly affect an individual's ability to practice that activity or have a significant impact on income, revenue, or employment in this state related to that activity. The rulemaking will not affect the general fund. The Department holds that there are no alternative means of achieving the objectives of the rulemaking.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The final rule includes non-substantive changes that were erroneously omitted from the proposed rule. During public meetings held under an open docket, the Department put before the regulated community the concept of separate and distinct Class A and B tags for deer and elk. A Class A tag would be for a higher quality deer or elk hunt than the alternative Class B tag, and would have an appropriately higher fee. However, the separate classes of tags were overwhelmingly rejected, and the Commission moved to propose a single type of tag for both deer and elk with the fee being equivalent to the Class B tags. Although the distinction between Class A and B tags was removed under the hunt permit-tag section, the Department mistakenly kept the Class A and B tags for elk and deer and their corresponding fees under the nonpermit-tag section in the proposed rulemaking that was published in the *Arizona Administrative Register*. In the final rulemaking, the Commission is deleting the Class A and B designations for deer and elk nonpermit-tags and the accompanying fee for a Class A tag. Instead the Commission is amending R12-4-102 to prescribe a fee for a deer and elk nonpermit-tag at the cost for a Class B nonpermit-tag. Removing the Class A nonpermit-tags for deer or elk and the corresponding fees will not affect the impact of the rule. The Commission has the authority under A.R.S. § 17-231 to determine the numbers and types of tags that are issued for hunts. The Commission has made it clear that it will not make any type of Class A tag available for sale. To do so would contradict the intent of the rulemaking as it was understood when the Commission approved the Notice of Proposed Rulemaking.

The Commission is also adding junior classes for deer, elk, javelina, and turkey tags, with corresponding fees, to the nonpermit-tag section. When the Commission approved the proposed rulemaking at its December 2005 open meeting, Commission members amended it to include junior classes of tags for deer, elk, javelina, and turkey at reduced fees for the purpose of encouraging youth hunting. The meeting minutes indicate that the intent was to create junior classes of "tags." No distinction was made whether the tags were hunt permit-tags or nonpermit-tags, even though the proposed rulemaking only includes junior classes of tags under the hunt permit-tag section. Under R12-4-101, "tag" means the authorization that an individual is required to obtain from the Department before taking certain wildlife. The definition does not distinguish between hunt permit-tag or nonpermit-tag. Both a hunt permit-tag and a nonpermit-tag provide the same privileges and authorize the same activity. The only difference between them is that each tag applies to a different type of hunt. The rule contains parallel construction with regard to the tags: for every hunt permit-tag for one species there is a nonpermit-tag for the same species at the same fee. There have only been two instances on record where they have differed. In the first instance in 2000, the fees for a hunt permit-tag and a nonpermit-tag for a particular species had to be separated to ensure that they were sold at the same fee. Because applications and fees for hunt permit-tags are received earlier than nonpermit-tags may be purchased, the effective date for amended fees for hunt permit-tags had to be earlier than the effective date for nonpermit-tag fee changes. In the second instance, R12-4-102 previously did not include a nonpermit-tag for sandhill crane because there were no hunts for crane that would warrant a nonpermit-tag. Recent rule changes have amended this to ensure that parallel construction exists for all big game species.

If junior classes of nonpermit-tags are not implemented, individuals who qualify for junior tags will not be able to take equal advantage of both hunt permit-tag and nonpermit-tag opportunities if the Commission authorizes nonpermit-tag junior hunts. The economic impact will be greater for junior hunters who use nonpermit-tags for deer, elk, javelina, and turkey; which may make those hunts cost prohibitive and discourage youth hunting. This directly contradicts the stated intent of the Commission for the junior classes of tags in the Notice of Proposed Rulemaking. Hunts that use nonpermit-tags include some archery hunts and population management hunts. The Department is unable to determine the loss of revenue from offering junior tags at a reduced price because the number of tags issued is determined by Commission Orders that change seasonally. However, the Commission understands this will result in less revenue, and has determined that the benefit of encouraging youth hunting and continuing the hunting tradition in this state far outweighs the cost.

In its proposed rulemaking, the Department also included an increased fee for the game bird hobby license. The new fee for the license is not included in this rulemaking, because the Department does not have the statutory authority to raise the fee any higher than it is currently. Minor grammatical and formatting changes will also be made at the request of G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The Department has received the following comments during the 30-day time period required to receive comment following publication of the Notice of Proposed Rulemaking in the *Arizona Administrative Register*.

Written Comment: Friday, Jan. 6, 2006, 3:42AM. The first comment came from 55 year-old retiree who was concerned that the fee increases would make hunting and fishing unaffordable to those living on a fixed income. He feels this is a huge percentage increase with no assurance that another increase won't be approved in the near future. His distress is amplified because hunting and fishing are the only recreation some retirees have, and they are activities they have looked forward to enjoying upon retirement.

Agency Response: The Department disagrees. These fee increases are part of a long-term plan to raise revenues to meet operational and employee costs. The Commission cannot charge more than 50% of the difference between the old fee ceiling and the new fee ceiling. Because the Game and Fish is not a general fund agency, the Department must generate revenue by increasing fees for its licenses, tags, and stamps to meet program and facility expenses. The Department has determined there are no alternative methods of achieving the objective of the rulemaking.

Written Comment: Friday, Jan. 6, 2006, 5:44AM. One commenter stated that the Commission should authorize a separate hunting license specifically to take small game wildlife. He does not believe it is fair for small game hunters to pay a higher fee for a license because he does not see any significant improvements in research and development for small game species, which has led him to conclude that most revenue goes to big game programs. He prefers that fee increases be passed on to non-residents and the Commission should eliminate the Class H three-day hunting license if it wishes to raise revenue. In his experience, Colorado, New Mexico, and Utah offer small game hunting licenses.

Agency Response: The Department disagrees. The Commission's objective is for the rulemaking to be effective for licenses, tags, and stamps used in 2007. If the Department includes a new license to take small game or deletes the Class H license, it would constitute a substantial change that would require additional notice to the public. This would delay the rule's effective past the date when the Department starts accepting applications for 2007 hunting licenses. In regard to funding for small game programs, the Department's wildlife management division determines its budget by the needs of its subdivisions, including small game development. The Department has proposed nonresident fee increases for the maximum amount allowable by law for all species except bighorn sheep in consideration of the interstate efforts made by outside wildlife groups for the conservation of the species.

Written Comment: Friday, Jan. 6, 2006, 8:00AM. This commenter feels that the fee increases are unacceptable. He also feels that the nonresident junior tags should not be offered for the same fee as resident junior tags, because it will make it increasingly difficult for resident youth to be drawn.

Agency Response: The Department disagrees. The Commission's objective is to encourage youth hunting in the state; Commission members did not differentiate between resident and nonresident youth. Although the junior tag fees may result in more applications, under R12-4-114, nonresident hunters may only receive 10% of hunt permit-tags in hunts for deer, elk, javelina, and turkey.

Written Comment: Friday, Jan. 6, 2006, 8:02AM. Instead of raising fees for hunt permit-tags, this individual asks whether the Department has considered increasing the application fee instead. It may be possible to raise the same amount of revenue by increasing the application fee from \$5 to \$10 rather than increase tag fees, which are only paid when someone is drawn.

Agency Response: The Department disagrees. When the agency started looking at methods to generate revenue, it determined that the best was to increase the fees for licenses, tags, and stamps as well as the application fee.

Written Comment: Friday, Jan. 6, 2006, 8:44AM. This individual finds the fee increases to be highly inflationary and out of line with the consumer price index. The commenter also believes that the fee increases will make hunting unaffordable to families that like to hunt together, which could be detrimental to the hunting tradition. This individual suggests a more modest fee increase and that future increases reflect the index of inflation. Otherwise, resident tag fees will surpass nonresident tag fees in other states.

Agency Response: The Department disagrees. When the agency developed its legislative proposal to authorize this rulemaking, it included the Class J family hunting license that would cost less than individual hunting licenses for each family member. If the Department linked its fees to the consumer price index (CPI), the agency would have to annually initiate rulemaking to accurately reflect it, which would become frustrating for the regulated community.

Written Comment: Friday, Jan. 6, 2006 8:49AM. The fee increases are unacceptable to the commenter. Based on the resident fees for tags charged by other southwestern states, the quantity and quality of deer hunts, and the infrequency of being drawn to hunt elk, this individual has determined that the Department is mismanaging itself and should look at reducing cost before increasing fees. The increased fees will make hunting unaffordable for him and his daughter.

Agency Response: The Department disagrees. In its justification for the rulemaking, the Department makes it clear that most of the revenue it expects to generate will go towards necessary expenses, such as meeting employee-related expenses and fuel costs and facility maintenance, none of which the Department has the ability to defer or reduce. The Department has determined that there are no available alternative means of achieving the objective of the rule-making.

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Written Comment: Friday, Jan. 6, 2006, 10:15AM. A senior citizen and 30-year resident commented that the fee increase is a bad idea. It will not encourage young people to hunt and fish, and it will make it unaffordable for retirees on fixed incomes. The amount that tag fees will increase will only alienate current hunters and fishers by making these activities unaffordable and may result in more poaching. The commenter also states that fee increases will personally discourage him from buying a Class F combination hunting and fishing license as well as discourage him from hunting deer and javelina. Also, the revenue the Department receives from his elk tag, if drawn, will pale in comparison to what it had received from him in the past. These are all the comments the individual makes in regard to the rulemaking.

Agency Response: The Department disagrees. The Commission has included several licenses and tags to not only encourage youth hunting but also to encourage family hunting and fishing as well. Although the Department does not believe that the fee increases for the Class G hunting license (an additional \$6.75) or the deer or javelina tags (an additional \$5.25 and \$8.75, respectively) are that great for residents, it has determined that fee increases are necessary to meet costs for continued operation and employee expenses. The Department has determined there are no alternative means of achieving the objectives of the rulemaking.

Written Comment: Friday, Jan. 6, 2006, 10:28AM. This individual only states that he is not interested in hunting in Arizona, because the Department charges too much to hunt on "our own" federal lands. The comment on federal land leads the Department to believe this comment comes from a nonresident.

Agency Response: The Department disagrees. Under A.R.S. § 17-231, the Commission is tasked with the responsibility of enforcing wildlife laws on all lands over which it has stewardship, including fees, regardless of land ownership.

Written Comment: Friday, Jan. 6, 2006, 10:41 AM. This individual makes several comments during the written comment period. The first is a question about what is being proposed for the guide license, and what the justification is. On Monday, Jan. 9, 2006, 10:03PM, he submitted another comment opposing the guide fee increase on the grounds that it takes very little work to enforce guide license rules. He holds that tripling the fee will drive out guides who only have a few clients, and will result in less revenue for the Department.

Agency Response: The Department disagrees. The Commission applied a common equation to the majority of license, stamp, and tag fees to ensure equal distribution, which resulted in a new fee of \$300 for a guide license. Although expenses for maintaining guide licenses include more than testing and maintaining annual reports, license revenue is not exclusively earmarked for the program that regulates the license. In the economic impact statement that accompanies this rulemaking, the Department has determined that it would be reasonable for guides to pass along increased costs to the consumer and that the benefits of the rulemaking outweigh any costs.

Written Comment: Friday, Jan. 6, 2006, 11:13AM. The Department surmises that the comment submitted expresses disagreement with the fee increases and the cost comparisons to other activities provided in the Department's public information materials.

Agency Response: The Department disagrees. The agency has compared the cost of hunting and fishing with the costs of other activities, such as going to dinner and a movie or attending an athletic event with family. In general, hunting and fishing were less expensive or comparable to the other activities.

Written Comment: Friday, Jan. 6, 2006, 11:16AM. The individual states that the fee increases for tags are ridiculous and exploitative. The agency's sole focus has been to increase fees without consideration of the regulated community. The individual would prefer the agency reduce costs rather than increase fees. These are all the comments the individual makes on this rulemaking.

Agency Response: The Department disagrees. The agency has made every effort to gain public input as part of the rulemaking process, even before initiating the legislative changes that authorize this rulemaking. Specific to the rulemaking, the Department notified the general public through postcard notices and press releases, conducted 11 public meetings across the state, received record attendance for rules meetings, and provided continuous updates through its Internet web site before the Commission voted to accept the Department's recommendation. The Department has demonstrated that the revenue needed would go to costs that cannot be reduced or deferred.

Written Comment: Friday, Jan. 6, 2006, 11:48AM. This individual states the fee increases for resident deer and elk will make hunting unaffordable for him and that nonresident deer tags in other states are more accessible.

Agency Response: The Department disagrees. In a cost comparison, the Department's increased resident hunting fees are still significantly less than nonresident hunting fees in other states.

Written Comment: Friday, Jan. 6, 2006, 12:52PM. This comment comes from a licensed guide who believes the increased fee for a guide license is discriminatory because it has the greatest percentage increase of all the commercial wildlife license fees (game bird shooting preserve, license dealers, live bait dealers, private game farms, taxidermist). The fee increases, combined with the cost for insurance and the inherently unstable client base, will make guiding cost prohibitive for small businesses. Although the commenter supports the concept and objective of increased fees, he would prefer they be distributed more evenly to other license fees.

Agency Response: Although the Department agrees that the guide license has the greatest percentage increase, the Commission applied a common equation to the majority of license, stamp, and tag fees to ensure equal distribution.

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In the economic impact statement that accompanies this rulemaking, the Department has determined that it is reasonable for guides to pass along increased costs to the consumer and that the benefits of the rulemaking outweigh any costs.

Written Comment: Friday, Jan. 6, 2006, 1:22PM. The commenter is strongly opposed to the fees for resident and nonresident junior tags, because there is no logic for the fees to be the same. It could also conceivably cause an adult to use a junior tag to take a second animal.

Agency Response: The Department disagrees. The Commission's objective is to encourage youth hunting in the state; Commission members did not differentiate between resident and nonresident youth. Under A.R.S. § 17-332(D), no license or permit is transferable, nor shall such license or permit be used by anyone except the person to whom such license or permit was issued, barring lawful transfer from parent or guardian to child.

Written Comment: Friday, Jan. 6, 2006, 2:11PM. This individual states that a fee increase occurred a couple years ago and that these fee increases are excessive. Although this individual disagrees with the fee increases for deer and elk, which may also make quail hunting unaffordable, he does not understand why nonresident fees are not going up as well.

Agency Response: The Department disagrees. The Commission is increasing fees for both resident and nonresident tags, licenses, and stamps. Because the Department is not a general fund agency, it has determined that the most effective way to meet its operational and employee costs is to raise fees for licenses, stamps, and tags. As stated in the economic impact statement, there are no available alternative methods of achieving the objective of the proposed rulemaking.

Written Comment: Friday, Jan. 6, 2006, 3:01PM. This commenter disagrees with the fee increases because the amount of the increases will make them unaffordable. He also states hunters will be further discouraged particularly from purchasing nonpermit-tags for supplemental hunts with low success rates. The commenter recommends the Department cut non-hunting programs instead of discouraging hunting with fee increases, unless the Department's true objective is to comply with the non-hunters taking over the state.

Agency Response: The Department disagrees. The agency has determined that the most effective means of meeting its operational and employee costs is to raise fees for licenses, stamps, and tags. The Department will not cut non-hunting programs because it would be neglecting its statutory responsibilities to manage the state's wildlife resources.

Written Comment: Friday, Jan. 6, 2006, 7:05PM. This individual questions the fairness of having an identical fee for resident and nonresident junior tags, because residents contribute more to the state's game preservation in general. The commenter does not object to lower fees for nonresident youth, but not identical fees as resident youth.

Agency Response: The Department disagrees. The Commission's objective is to encourage youth hunting in the state; it did not differentiate between resident and nonresident youth.

Written Comment: Friday, Jan. 6, 2006, 7:49PM. The commenter notes that fees were increased recently. He also states that fee increases will make hunting unaffordable to working people who hunt to put meat on the table, and it will start turning the sport into an activity only accessible to the rich.

Agency Response: The Department disagrees and holds that fee increases are the most effective available means of meeting its operational and employee expenses. Furthermore, it is the Department's experience that the cost of hunting is not confined to the cost of a tag. Outdoor enthusiasts also spend a great deal of money on additional equipment and necessities such as food, gas, tents, hotel rooms, and other basic accommodations including those specific to hunting.

Written Comment: Friday, Jan. 6, 2006, 9:10PM. The commenter is strongly opposed to the fee increases and questions their reasonability. She also disapproves of the identical fees for resident and nonresident junior tags because it will make hunting less accessible for young hunters. If the Department's objective is to encourage youth hunting, she recommends giving them away as contest prizes or rewards.

Agency Response: The Department disagrees. The agency and the Commission have been developing the fee increases before the 2005 legislative session that amended the statutes that authorize this rulemaking. The Commission has determined that the fee increases are the most effective available method of meeting the agency's operational and employee costs. The Commission's objective for charging an identical fee for both resident and nonresident youth is to encourage youth hunting in the state. As stated in the economic impact statement, the Department has determined that there are no alternative methods of achieving the objectives of the rulemaking, and that the benefit of the rulemaking outweigh its costs.

Written Comment: Friday, Jan. 6, 2006, 9:16PM. The commenter does not believe the agency's justification for increasing fees and holds that the Department has ample funds, manpower, and materials to function. He also states that hunting is one of the few things inner city youth can afford to do with their families and that increased fees will promote poaching. He continues by stating the Department has not said what it will do with the revenue generated from fee increases, and that an audit of the Department's finances may be warranted.

Agency Response: The Department disagrees. Increasing costs associated with employee-related expenses are unrelated to the available resources or manpower available to the agency. The Commission has included several different

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types of family hunting and fishing licenses so these activities will remain affordable to all families. The Department has stated in the rulemaking that the revenue generated by fee increases will meet costs including but not limited to: increasing fuel prices, rising agency expenses, employee related expenses and turnover, public recreational access issues, and outdoor and wildlife programs. The agency does not receive money from the state general fund to address these costs. The Department has also prepared a revenue expense summary for the public available on its web site. The same information was presented to the public during its public meetings.

Written Comment: Friday, Jan. 6, 2006, 10:13PM. An avid hunter and fisherman supports the fee increases, and says, like stamps, it's good the changes occur only after a few years of stability.

Agency Response: The Department appreciates the support.

Written Comment: A nonresident hunter believes the fee increases will cause other states to raise their nonresident fees to the point where they are unaffordable for Arizona hunters.

Agency Response: The Department disagrees. Other states have and will continue to raise their fees based on their respective needs for additional funding independent of the fee increases made by the Arizona Game and Fish Commission.

Written Comment: Saturday, Jan. 7, 2006, 8:52AM. An individual that attended the Department's public meetings held under an open docket prefers alternative methods of increasing revenue. The commenter further states that the fee increases are more than increases in the cost of living or inflation and that the fee increases are a very good foothold to increase tag and license fees again in the near future. With these increases, the Department is already half way to the new cap.

Agency Response: The Department disagrees. The agency has determined that fee increases are the most effective available means of meeting its operational and employee costs. The maximum amount that the Department is able to charge the first year the authorizing statutes become effective is fifty percent of the difference between the previous fee ceiling and the current fee ceiling. These fee increases are part of a long-term plan to increase fees to generate necessary operational revenue. The Department does not receive money from the state general fund.

Written Comment: Saturday, Jan. 7, 2006, 9:15AM. A fishing enthusiast would like to see the agency create a fishing license that would combine a Class A general fishing license and a Class U urban fishing license.

Agency Response: The Department agrees. Under this rulemaking, the Commission has created a Class L super conservation fishing license that grants the same privileges as a Class A general fishing license, a Class U urban fishing license, and a trout stamp.

Written Comment: Sunday, Jan. 8, 2006, 6:37AM. A retired person requests the Department reconsider the fee increases, because it is already barely affordable for those living on a fixed income. If not, this individual will have to look elsewhere for hunting opportunities.

Agency Response: The Department disagrees. The Commission has determined that the most effective available means of meeting its operational and employee costs is to increase fees. There are no alternative methods of achieving the objective of the rulemaking.

Written Comment: Sunday, Jan. 8, 2006, 8:07AM. The commenter finds it hard to justify a fee increase when a fee increase took place a few years ago. He also states that the amount of the increases will make hunting unaffordable for the average family. The Department's justification for needing additional revenue is also unconvincing considering that other surrounding states' resident tag fees are lower than Arizona's. He also questions guide license fee increases because the Department does little more than send an annual report and collect the fees.

Agency Response: The Department disagrees. The objective of the fee increases made under this rulemaking is to meet continuous and relatively new agency expenses. The Commission has included several different types of licenses to make hunting and fishing affordable for families. A portion of the Department's fee increase is meant to address expenses specific to this state. Otherwise, the Department is not familiar with the expenses incurred by other state wildlife agencies. The Department does, however, know that its resident tag fees are not the most expensive of the southwest states. Regarding the fee for a guide license, the Commission applied a uniform equation to determine the new fees. Although the percentage increase is greater than other licenses, the revenue generated by the guide license fee will not exclusively address guide program expenses.

Written Comment: Sunday, Jan. 8, 2006, 8:41AM. The commenter states that the fee increases are excessive, especially residents, and will act against the Department's continuous objective of keeping hunter retention high by making hunting unaffordable.

Agency Response: The Department disagrees. The Department has been working extensively to develop a fee structure that will generate necessary revenue and that is also acceptable to the regulated community. The Commission has also approved several new licenses to continue to make hunting and fishing more cost effective.

Written Comment: Sunday, Jan. 8, 2006, 12:05PM. A life-long resident of Arizona commented that he found the resident fee increases a little onerous. Resident hunters have endured enough from the rule changes and "red tape" that resulted from the court case (*Montoya v. Shroufe*) that overturned the 10% cap. And although he supports funding for the Department, he believes that the increased amount for elk tags far exceeds the management need. The Depart-

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ment may also lose revenue by making hunting unaffordable for many. This is contradictory to how the Department addressed the court debacle.

Agency Response: The Department disagrees. The Department has been working extensively to develop a fee structure that will generate necessary revenue to meet operational and employee costs and that is also acceptable to the regulated community, including residents. The agency applied a uniform equation to most of its current fees to determine the new fee structure. The revenue generated by the new license fees is not exclusively dedicated to the program that regulates the respective licenses.

Written Comment: Sunday, Jan. 8, 2006, 4:12PM. The commenter approves of the fee increases and is glad to see the Class A and B tags were not proposed. Although he would have liked to see resident pay more, he understands why the fees were proposed as they were. These are all the comments he provided on the rulemaking.

Agency Response: The Department appreciates the support.

Written Comment: Sunday, Jan. 8, 2006, 9:17PM. The commenter finds it unfortunate that the Department is making drastic fee increases, especially when it is encouraging people to hunt and fish. The commenter expresses concern over the use of revenues and encourages the Department to reexamine its program and personnel costs. His major concern is that the Department is mismanaging its revenue and is thoughtlessly passing its financial obligations onto the public like other state, city, county, and federal departments.

Agency Response: The Department disagrees. The agency has already examined its program and personnel costs, the findings of which provided the motivation for pursuing fee increases. The Department has worked extensively to determine a fee structure that would meet its operational and employee costs and would also be acceptable to the regulated community.

Written Comment: Monday, Jan. 9, 2006, 9:54AM. This individual states that fee increases are exceeding pay raises and cost of living expenses. He also doubts the Department's justification for increased revenue for habitat improvements because improvements take up a very small portion of the money. The commenter also finds the fee increases exploitative in light of recent changes to the number of tags issued under Commission Order. The individual also derides the Class A and B tags that were removed from the rulemaking.

Agency Response: The Department disagrees. The Commission has determined that fee increases are the most effective available means of increasing revenue to meet continuing and new operational and employee costs. Program costs make up only a portion of the revenue need. The Commission has removed all Class A and B tags from the rulemaking.

Written Comment: Monday, Jan. 9, 2006, 10:22AM. The commenter suggests that the Commission double the fees for nonresident tags. This is consistent with the fees he has had to pay in other states as a nonresident. He also states that nonresidents should not be permitted to purchase nonpermit-tags for deer on the Kaibab.

Agency Response: The Department disagrees. If the Commission charges fees excessively greater than resident fees, it may constitute a violation of the Privileges and Immunities Clause. To prohibit nonresidents from purchasing nonpermit-tags would be discriminatory and therefore illegal.

Written Comment: Monday, Jan. 9, 2006, 11:35AM. A licensed guide expressed his general support for the fee increases, except for the new fee for a guide license. His reason is that most of the licensed guides he knows only guide as a supplemental source of income because it is not a lucrative endeavor. The current fee is appropriate. A higher fee is a penalty.

Agency Response: The Department disagrees. The Commission applied a common equation to determine the amount to increase fees. In the economic impact statement that accompanies this rulemaking, the Department has determined that it is understandable for guides to pass along increased costs to the consumer.

Written Comment: Monday, Jan. 9, 2006, 12:56PM. The commenter emphatically voices her disapproval of the identical resident and nonresident junior tag fees because it will encourage more young nonresident hunters to apply to hunt in Arizona, reducing the odds that a resident youth will be drawn.

Agency Response: The Department disagrees. The Commission's objective is to encourage youth hunting in the state; it did not differentiate between resident and nonresident youth. Although the junior tag fees may result in more applications, under R12-4-114, nonresident hunters may only receive 10% of hunt permit-tags in hunts for deer, elk, javelina, and turkey.

Written Comment: Monday, Jan. 9, 2006, 1:15PM. Although the commenter supports the Class I family fishing license, he would like to see the Commission approve a family urban fishing license. He finds it frustrating, because he has a Class A and a Class U license, but his son has a license under the Class I license. He also wishes there was a mechanism to allow him to fish with his grandson that did not require him to purchase a separate Class U license for him.

Agency Response: The Department disagrees. The Commission did not approve a family urban fishing license. To include it would constitute a substantial change, which would require additional public notice and delay the rulemaking.

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Written Comment: Monday, Jan. 9, 2006, 4:02PM. A life-long Arizona hunter comments that the fee increases will make hunting unaffordable for a lot of people. Given the difficulty of getting drawn for an elk hunt permit-tag and living expenses, he feels the added expense will prohibit him from continuing to apply.

Agency Response: The Department disagrees. The Department has been working extensively to develop a fee structure that will generate necessary revenue and that is also acceptable to the regulated community. It is also the agency's experience that the costs for hunting are not confined to the cost of a tag. Outdoor enthusiasts also spend a great deal of money on additional equipment and necessities such as food, gas, tents, hotel rooms, and other basic accommodations including those specific to hunting. The Commission has also developed several different types of licenses to continue to make hunting more affordable, such as the family licenses, or cost effective, like the super conservation licenses. The Department has determined that fee increases are the most effective available method of achieving the objective of the rulemaking and that the benefits outweigh the costs.

Written Comment: Monday, Jan. 9, 2006, 6:15PM. An avid fisher does not believe fishing license fee increases are warranted given the lack of fish he has found in the water since he has lived in Arizona. If the fee increases are approved, he and many others will no longer fish in Arizona.

Agency Response: The Department disagrees. Although the agency regrets the individual's unproductive fishing trips, the Commission has determined that the best available means of meeting operational and employee costs is to raise fees. There are no alternative methods of achieving the rulemaking's objective.

Written Comment: Monday, Jan. 9, 2006, 11:28PM. A resident hunter states his support for raising nonresident tag fees, but also his disapproval of raising resident tag fees. Raising resident fees will increase poaching, and will make hunting unaffordable to him. He also states that Arizona voters should have the opportunity to determine fee increases so that the general public has a voice in the matter.

Agency Response: The Department disagrees. If the Commission charges fees excessively greater than resident fees, it may constitute a violation of the Privileges and Immunities Clause as well as be inconsistent with the North American model of wildlife management.

Written Comment: Tuesday, Jan. 10 2006, 6:38PM. The commenter does not agree with the fee increases. The new fees are based on incorrect figures. He knows two state employees who deny the need for increased revenues for retirement expenses. The cost of fuel has come down significantly since the public meetings on the proposed rules. Employee salary increases will be given from state surplus revenue. The fee increases will make hunting unaffordable to blue collar workers, especially in light of the fee increase that occurred a few years ago. The commenter also has made it known that he will inform Governor Napolitano of the Department's fee increases and encourage her to give her input.

Agency Response: The Department disagrees. The Department based the fee proposal on sound figures. Although gas prices have come down from their high of over \$3.00 per gallon, the agency still exceeded its 2005 fuel budget. Increased employee related costs including state retirement and medical insurance costs cannot be deferred or absorbed by general fund monies. The Department has determined that there are no available alternative methods of achieving the objective of the proposed rulemaking.

Written Comment: Wednesday, Jan. 11, 2006, 6:00AM. A third-generation Arizona resident wishes to support fee increases for nonresidents more so than what the Department proposed.

Agency Response: The Department disagrees. If the Commission charges fees excessively greater than resident fees, it may constitute a violation of the Privileges and Immunities Clause as well as be inconsistent with the North American model of wildlife management.

Written Comment: Wednesday, Jan. 11, 2006, 10:41AM. A part-time resident hunter wishes to voice her support for the Class A and B deer and elk tags.

Agency Response: The Commission did not include the Class A and B deer and elk tags in the final rulemaking.

Written Comment: Thursday, Jan. 12, 2006, 8:52AM. This individual sent two comments. The first was a question about what the new fee for a nonresident hunting license and elk tag will be. He sent a second comment on the same day at 9:40AM stating that the fee increase is quite a jump. He also asked whether the fee increases will result in fewer nonresident hunters.

Agency Response: The Department does not believe the increased fee will significantly reduce nonresident applications.

Written Comment: Thursday, Jan. 12, 2006, 4:57PM. A commenter vehemently opposes the fee increases. He states that they will make hunting unaffordable for many and discourage it as a family tradition.

Agency Response: The Department disagrees. The Commission has included several new licenses to make hunting and fishing more affordable for families. There are no available alternative methods to achieve the objective of the rulemaking.

Written Comment: Friday, Jan. 13, 2006, 2:35PM. A licensed fishing guide who has previously supported the Department's actions wishes to express his concern over the new fee for a guide license. The 300% increase is unfair

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to part-time guides, particularly fishing guides, who do not make as much per trip as larger outdoor outfitters. The amount received annually for guided trips minus the fees for the license, as well as fees incurred by other outdoor authorities, results in a very slim profit margin. Although guiding is not a major source of his income, the fee increase would discourage him from renewing his license. The commenter continues and recommends basing guide license fees on some other type of criteria, but is open to some kind of alternative.

Agency Response: The Department disagrees. The Commission applied a common equation to the majority of license, stamp, and tag fees to ensure equal distribution, which resulted in a new fee of \$300 for a guide license. In the economic impact statement that accompanies this rulemaking, the Department has determined that it is reasonable for guides to pass along increased costs to the consumer and that the benefits of the proposed rulemaking outweigh any costs. The Department has also determined that there are no alternative methods of achieving the objective of the rulemaking.

Written Comment: Friday, Jan. 13, 2006, 3:00PM. Commenting on behalf of his family, a business-owner stated his opposition to the fees taking effect. The new fees will make hunting unaffordable to many in the lower income bracket. He asks whether there is an alternative means of generating revenue.

Agency Response: The Department has determined there are no available alternative methods of achieving the objective of the rulemaking. As part of these amendments, the Commission has added family hunting and fishing licenses to ensure that the hunting tradition continues.

Written Comment: Sunday, Jan. 15, 2006, 10:15AM. Based on his experiences in other states and the Navajo Reservation, the commenter states nonresident fees should be raised more. These are all the comments he makes on the rulemaking.

Agency Response: The Department disagrees. If the Commission charges fees excessively greater than resident fees, it may constitute a violation of the Privileges and Immunities Clause.

Written Comment: Monday, Jan. 16, 2006, 11:14AM. The commenter states the fee increases will make hunting unaffordable to older people on a fixed income, and that the Department should give them the same consideration as they give to junior hunters.

Agency Response: The Department disagrees. The agency has determined that fee increases are necessary to meet costs for continued operation and employee expenses. The Department has determined there are no available alternative means of achieving the objectives of the rulemaking.

Written Comment: Monday, Jan. 16, 2006, 4:31PM. The commenter asks what the age limit for a resident youth to receive a Class K combination license. He also wishes to know if it includes a trout stamp and what the difference is between a Class A and B tag.

Agency Response: Under A.R.S. § 17-333(C), the privileges of a Class K license can be extended to a minor child who will be at least 14 years of age during the license year. The license does not include a trout stamp.

Written Comment: Tuesday, Jan. 17, 2006, 3:19PM. An avid resident hunter strongly opposes the increased fees for deer and elk, especially in light of fee increases that took place in earlier years. This is the only comment offered on the rulemaking.

Agency Response: The Department disagrees. The new fees are intended to meet continuing and relatively new operational and employee expenses.

Written Comment: Wednesday, Jan. 18, 2006, 8:07AM. The individual that submitted this comment supports fee increases for nonresidents but not for residents.

Agency Response: The Department appreciates the support. However, the agency cannot establish fees for nonresidents that are relatively greater than resident fees.

Written Comment: Wednesday, Jan. 18, 2006, 10:59AM. The commenter opposes the fee increases because they will make hunting unaffordable and reduce the Department's revenue.

Agency Response: The Department disagrees. The Department has been working on the new fee structure since before the beginning of the 2005 legislative session in which the authorizing statutes were made to determine what fees would be acceptable to the regulated community and would meet the Department's operational expenses. The Commission has also developed several different types of licenses to continue to make hunting more affordable, such as the family licenses, or cost effective, like the super conservation licenses.

Written Comment: Wednesday, Jan. 18, 2006, 1:32PM. A longtime hunter and fisher, the commenter states that the fee increases will make hunting unaffordable. He recommends alternative revenue sources, like raising nonresident fees, usage charges for outdoor locations, and fee scales based on length of residency.

Agency Response: The Department disagrees. The Department has been working on the new fee structure since before the beginning of the 2005 legislative session in which the authorizing statutes were made to determine what fees would be acceptable to the regulated community and would meet the Department's operational expenses. The Commission has also developed several different types of licenses to continue to make hunting more affordable, such as the family licenses, or cost effective, like the super conservation licenses. The Commission is also amending most

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nonresident fees to the maximum amount allowed by statute. The Department has determined that fee increases are the most effective available method to meet its costs.

Written Comment: Received Wednesday, Jan. 18, 2006, by mail. A resident senior strongly opposes raising hunting and fishing license fees in light of the reported general fund surplus and new fees charged over several years.

Agency Response: The Department disagrees. The agency does not receive money from the state general fund. The objective of the rulemaking is to meet continuing as well as relatively new operational and employee costs. Increasing fees are the most effective method of meeting these costs.

Written Comment: Received Thursday, Jan. 19, 2006, by mail. The commenter states that although he does not oppose the increased license fees, he is opposed to the separation of Class A and B tags for deer and elk. Different classes of tags insinuates that he and his family are second class citizens, because they cannot afford a Class A tag.

Agency Response: The Department appreciates the support. The Commission chose not to go forward with separate classes of tags for deer and elk for similar reasons.

Written Comment: Friday, Jan. 20, 2006, 1:13AM. The commenter does not agree with the fee increases for residents because the fee increases overall are retaliatory against nonresidents for recent court cases (*Montoya v. Shroufe*). This will make hunting unaffordable to the poor, which isn't fair, because they hunt for meat.

Agency Response: The Department disagrees. The agency has been working on these fee increases before the beginning of the 2005 legislative session in which the authorizing statutes were amended to determine what new fees would be acceptable to the public and would meet the Department's costs. It is also the agency's experience that the costs for hunting are not confined to the cost of a tag. Outdoor enthusiasts also spend a great deal of money on additional equipment and necessities such as food, gas, tents, hotel rooms, and other basic accommodations including those specific to hunting. The Department has determined that fee increases are the most effective available method of achieving the objective of the rulemaking and that the benefits outweigh the costs.

Written Comment: Monday, Jan. 23, 2006, 5:00AM. In response to another comment opposing the fee increases, the individual that submitted this comment supports the new fees. For what the public gets and what the agency needs to do, the new fees are fair.

Agency Response: The Department appreciates the support.

Written Comment: Tuesday, Jan. 24, 2006, 11:39AM. In regard to the price increases proposal, the commenter believes that the resident fee increases for deer and elk are excessive. The commenter believes that a gradual fee increase over a number of years would be more preferable than if the agency proposed another fee increase in the next few years. He also expresses concern that the fee increases will make hunting a luxury instead of a family tradition. Ultimately, he feels the fee increases are too much at this time.

Agency Response: The Department disagrees. When the agency held public meetings under an open docket to gather input on the new fees, people were more receptive to fee increases every several years than gradual increases every year. The Department has included several different license options to continue to make outdoor recreation affordable for families and to continue hunting as a tradition.

Written Comment: Tuesday, Jan. 24, 2006, 10:08PM. The commenter finds the new fees out of line. He could accept a 5% to 6% increase, but not what the Department has proposed. The new fees will make hunting unaffordable to youth, and will exacerbate decreasing license sales.

Agency Response: The Department disagrees. The new fees are being made to address increasing operational costs that could not be met with a maximum 6% fee increase. The Department has included new types of licenses for youth and families so hunting will still be affordable.

Written Comment: Received Jan. 25, 2006 by mail. The commenter supports the fee increases.

Agency Response: The Department appreciates the support.

The Department will continue to receive and respond to written comments until Feb. 4, 2006.

Written Comment: Wednesday, Jan. 25, 2006, 5:22PM. An Arizona native who is also an avid hunter and fisher finds the new fees totally absurd when the agency is "wasting money" publishing its hunting and fishing regulations in Spanish, especially because hunting and fishing are privileges, not rights. The Department has a responsibility to use the money entrusted to it wisely.

Agency Response: The Department disagrees. The agency is increasing its fees to address its rising operational, retirement, and medical insurance costs, and has made public what it intends to do with the generated revenue. In general, those who have seen the projected revenue use have supported the new fees.

Written Comment: Wednesday, Jan. 25, 2006, 7:32PM. The commenter states that although his family has benefited greatly from the hunter safety program and has a high opinion of the state's game management, there is no way he and his family can continue the hunting tradition under the new fees. He understands the costs the Department is facing, but modest increases in tags would be easier to support.

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Agency Response: The Department disagrees. The agency has included new types of licenses and tags (Class J family hunting license, Class K family hunting and fishing license, and the junior tags for elk, deer, javelina, and turkey) to ensure that hunting stays affordable for families.

Written Comment: Thursday, Jan. 26, 2006, 8:35AM. The commenter feels that the fee increases are doing more to protect current and future Arizona wildlife for out-of-state hunters, and are making hunting unaffordable to residents. Being a county employee himself, he is not sympathetic to the Department's need to increase salaries. He asks that the agency keep its fees reasonable so that residents can afford to hunt and fish rather than being forced to look for opportunities out-of-state.

Agency Response: The Department disagrees. The Department has included new types of licenses, such as the super conservation licenses, to keep hunting and fishing affordable for resident hunters. The Department has recently amended R12-4-114 to reinstate the 10% nonresident hunter cap. Although the Department understands the commenter's frustration, the cost of a resident hunting license and tag is still less expensive than a nonresident license and tag in another southwest state.

Written Comment: Thursday, Jan. 26, 2006, 5:04PM. A nonresident commented that he loved hunting in Arizona, but the new fees will make hunting unaffordable for him, especially the new bighorn sheep fee. He is an average hunter with an average income.

Agency Response: The Department disagrees. It is the agency's experience that the costs for hunting are not confined to the cost of a tag. Outdoor enthusiasts spend a great deal of money on additional equipment and necessities such as food, gas, tents, hotel rooms, and other basic accommodations including those specific to hunting. When the Commission approved the new fees, it reduced the nonresident bighorn sheep tag in consideration of the interstate efforts to improve bighorn sheep management.

Written Comment: Saturday, Jan. 28, 2006, 11:00AM. In the Department's original proposal to the public, the fee for a nonresident bighorn sheep tag was listed at \$2000. The commenter believes that the officially proposed fee of \$1400 for a nonresident bighorn sheep tag indicates that the agency is pushing residents aside for nonresident hunters willing to pay these new fees. Since the increased rates are geared at meeting the operating expenses and addressing new programs, the commenter suggests finding alternative funding sources. Lastly, he asks what resident hunters get in exchange for the fee increases. The new fees will make hunting and fishing unaffordable for certain income groups.

Agency Response: The Department disagrees. When the Commission approved the new fees, it reduced the nonresident bighorn sheep tag in consideration of the interstate efforts to improve bighorn sheep management. The Commission also approved recent rule amendments that reinstated the 10% nonresident hunter cap to maintain resident hunting opportunities. The Department has determined as stated in the economic impact statement that there are no alternative means of achieving the objective of the rulemaking.

Written Comment: Received Tuesday, Jan. 31, 2006, by telephone. The commenter stated that the Department should charge more for the nonresident Class B four-month fishing license, nonresident Class C four-day fishing license, nonresident Class H three-day hunting license, nonresident bighorn sheep tag, and the nonresident javelina tag to address growing demand for these opportunities; and reduce the fee for the resident elk tag. The commenter also believes the Department should reduce the resident mountain lion tag to address the large problem mountain lion present. These are all the comments the individual made on the rulemaking.

Agency Response: The Department disagrees. Under the statutory changes that authorized this rulemaking, the Department is unable to increase fees more than they were proposed, except for the nonresident bighorn sheep tag. The Commission reduced the fee for the nonresident bighorn sheep tag in consideration of the interstate efforts to improve bighorn sheep management. The Commission is hesitant to reduce fees for residents to the point where the difference between the resident and nonresident fees is so great it might be inconsistent with the purpose of federal legislation that authorized reinstatement of the 10% nonresident cap.

Written Comment: Tuesday, Jan. 31, 2006, 7:21PM. The commenter states that the agency is going about raising revenues the wrong way. The average income in Arizona is between \$28,000 - \$32,000, which means most people will not be able to afford to hunt and fish. The commenter demonstrates in his e-mail that the new fees will cost him and his family approximately \$150 more to go hunting. The new fees will be especially difficult for single parents and young men and women who turn 18 who don't earn much and have expenses that minimize their income. Given the poor quality of the deer hunting, the difficulty of being drawn for an elk tag, and the poor fishing opportunities, new fees seem unfair. Only the wealthy will be able to afford to go hunting and fishing, and the heritage of hunting and fishing will be lost. He closes by asking if nobody can afford to hunt or fish what will protect the jobs of the agency's employees.

Agency Response: The Department disagrees. Although the Department holds that it has included several different types of licenses to make hunting and fishing affordable, the Department has determined there are no alternative methods of achieving the objective of the rulemaking.

Written Comment: Received Feb. 1, 2006, by mail. This individual submitted comments, but did not give a name or leave a return mailing address. The individual expresses their concern that this is another sport that is becoming only for the rich and famous. With the new fees, sales will go down. There are a lot of people in this state who live on a

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fixed income and this is the only sport that they can enjoy, but this will wipe a lot of people out of the only thing they have left. The individual can only determine that the new fees are an effort by the Department to drive people to pursue outdoor activities on the reservation. There are people looking for raises in pay and the one's that need it won't get it. If sales go down, the Department will have to raise fees again in 2008 to make up the difference.

Agency Response: The Department disagrees. Although the agency expects there will be buyer resistance the first year the new fees become effective, the regulated community will gradually accept them. The Department has also included several different types of licenses to continue to make hunting and fishing affordable. The agency holds these opportunities will continue to make outdoor recreation more affordable than on the reservation. The objective of the new fees is to address increasing operational and employee costs as well as pay raises.

Written Comment: Wednesday, Feb. 1, 8:48AM. The commenter states that increasing the cost of a resident elk tag from \$78 to \$114 will deter young hunters from participating in recreational sport harvest and will therefore hurt the Department and the sport in the long run. Young and lower income hunters do not have the money to gamble on a successful tag, particularly if their objective is to obtain game meat. The commenter personally hunts cow elk for meat himself, and has two children approaching hunting age. The new fees will discourage them from entering the draw.

Agency Response: The Department disagrees. The Commission included new licenses and tags to continue to make hunting and fishing affordable, especially for young people. The Department will start issuing tags for deer, elk, javelina, and turkey to junior hunters at a lower fee than the adult tags. The Department will also start issuing family licenses for hunting and fishing so children who are at least 14 years of age can obtain a license for two dollars. Although the fee for tags and licenses is going up, the Department holds there are no available alternatives to achieve the objective of the rulemaking.

Written Comment: Wednesday, Feb. 1, 2006, 9:49AM. A former Department employee who attended the public meeting in Flagstaff and has reviewed the written material pertinent to the rule changes recognizes the Department cannot operation with the existing fee structure. He does not want to see services cut and appreciates the salary issue, knowing first-hand how much less Department employees make in comparison with other state wildlife agencies. However, the commenter also feels some fees may be too high. The Department indicated that the amount that it hopes to generate from the new fees will actually exceed the amount needed to address things like operational and employee costs. In summary, he hopes the proposed fee increase, the first of others to follow, is fiscally responsible and does not unduly penalize those that purchase licenses and tags for the sake of erring on the high side of revenue projections. In addition, the commenter feels the nonresident fee issue deserves some careful study. Although the new nonresident fees are probably reasonable, the larger issue of prescribing higher fees to nonresidents deserves careful study. The practice of placing higher fees on nonresidents, particularly in southwestern states, may invite new litigation that could result in state wildlife budgets being determined by the federal court budget approval process. These are all the comments the individual makes on the rulemaking.

Agency Response: The Department appreciates the support, but disagrees that the fees are too high. Although the amount generated by the fee increases will exceed the need of meeting operational and employee costs, these are still immediate expenses. The Department expects continued increases in these costs and has to make long-term projections to ensure that it can still meet these expenses in the coming years. The revenue that will be used to perpetuate outdoor recreation programs is still consistent with the Department's intent of using revenue to meet operational expenses. Regarding new fees, the Commission is mindful not to exorbitantly increase nonresident costs. If the difference between the resident and nonresident fees becomes too great it might be inconsistent with the purpose of federal legislation that authorized reinstatement of the 10% nonresident cap.

Written Comment: Wednesday, Feb. 1, 2006, 3:12PM. A retired senior citizen living on a fixed income most strenuously objects to any increase in hunting and fishing licenses, tags, fees, etc. Though costs for food, gas, utilities, taxes, and many other things may increase, the commenter's social security and pension do not. He would rather "hold the line" and leave the fees as they are.

Agency Response: The Department has stated in the economic impact statement that there are no available alternative methods of achieving the objective of the rulemaking.

Written Comment: Thursday, Feb. 2, 2006, 11:58AM. The commenter would rather the Department issue more tags to increase revenue than raise fees. The commenter hunts to spend time with his sons and to teach them to hunt and also to obtain game meat. The new fees are making it too expensive to apply for elk, deer, javelina, or any other species. He doesn't poach, though he can understand why people would, if they had to feed their family. To make hunting unaffordable to these people is wrong. The commenter speculates the reason for the new fees is to hire more staff and to pay for raises, because the wildlife does not cost the agency anything. And if that is the case, he feels the Department should obtain money from the general fund or issue more tags. After paying \$114 for a tag and \$200 to have the carcass processed, it is already expensive. These are all the comments he makes on the rulemaking.

Agency Response: The Department disagrees. The Commission has included several new license options to ensure that hunting continues to be affordable, such as the family hunting license and the junior hunt tags for elk, deer, javelina, and turkey. The Department has stated before that outdoor enthusiasts spend money on additional equipment and necessities such as food and gas when they go hunting. It is also the Department's experience that the tag is typically one of the least expensive items. The Department has also stated that, because it is not supported by the state

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general fund, it has to generate revenue to address increasing operational and employee costs that cannot be deferred. These include retirement and insurance costs for employees as well as continuing resource conservation programs, like building water catchments so wildlife does not die from thirst. The Department has stated that there are no available methods of achieving the objective of the rulemaking.

Written Comment: Saturday, Feb. 4, 2006, 10:34PM. The commenter strongly believes the Department deserves the new fees. The commenter and his wife do not hunt, but they do fish and camp, and greatly enjoy and appreciate the programs offered by the Department, particularly given the state's diverse landscape. They hope the agency's cost-cutting doesn't affect the quality of these programs or wildlife services, and feel the Game and Fish has done a superb job providing these high-quality services.

Agency Response: The Department appreciates the support.

Written Comment: Sunday, Feb. 5, 2006, 1:37PM. The commenter holds that, although he is wasting his time, he wants the Department to know that he has not been able to take advantage of a lot of hunting opportunities, except deer, elk, and turkey, because they have become unaffordable. The agency's new fees are undeserving because the quality of game management has gravely declined. The Department wants more and more money, but now that the commenter is in a wheelchair, which has increasingly limited his hunting opportunities, he believes the public is not getting anything back.

Agency Response: The Department disagrees. The Commission has approved several new licenses to continue to make hunting and fishing more cost effective, particular to this comment the super conservation hunting and fishing licenses. The Class L, M, and N licenses include several different licenses and stamps as well as nonpermit-tags to allow archery hunting for big game species, like turkey, deer, and javelina. Some of the reasons the Department is increasing its fees is to continue to effectively manage game species in spite of the continuing drought and forest recovery efforts, as well as to expand recreational opportunities and land access. The Department has stated that there are no available alternative methods of achieving the objective of the rulemaking.

Written Comment: Sunday, Feb. 5, 2006, 6:17PM. The commenter asks if the price of a lifetime hunting and fishing combination license is increasing as well.

Agency Response: The fee for a lifetime hunting, fishing, or combination hunting and fishing license is determined by the statutory ceiling for these licenses. The statutory ceiling for a Class A general fishing license, a Class G general hunting license, and a Class F combination hunting and fishing license were raised, so the fee for the corresponding lifetime licenses will increase as well, but not as a result of this rulemaking.

Written Comment: Monday, Feb. 6, 2006, 5:28AM. A native avid hunter and sportsman comments that he has a serious problem with the new fees, because he feels the increased amount is outrageous and he does not know for what purpose the revenue will be used. As a business owner, he understands the need for rate increases. However, if he raised his prices at the same percentage as the Department has, his customers would go elsewhere. Many hunters already are. These are all the comments he makes on the rulemaking.

Agency Response: The Department disagrees. The agency has made public knowledge the objective it intends to achieve with the new fees: addressing increasing operation and employee costs, maintaining its duties to effectively manage wildlife, and providing access to the regulated community. The Commission is also adding new types of licenses and tags to continue to make hunting affordable. As stated in the economic impact statement, although the Department anticipates there will be some buyer resistance, it typically diminishes.

Written Comment: Monday, Feb. 6, 2006, 9:32AM. The commenter finds it incomprehensible that only resident fees are significantly increasing in light of problems caused by nonresidents. If the Department is proposing significant nonresident increases, the new fees are more palatable. If not, the commenter opposes them.

Agency Response: The Commission is increasing nonresident fees, as well as resident fees, as part of this rulemaking. Although the Commission is increasing fees to the maximum amount allowed during the first year under its authorizing statute, the Commission is hesitant to raise resident and nonresident fees significantly unequally, because it might be inconsistent with the purpose of federal legislation that authorized reinstatement of the 10% nonresident cap made under a separate rulemaking.

Written Comment: Monday, Feb. 6, 2006, 9:40AM. The commenter asks that the Department give some monetary relief to the elderly living on a fixed income who enjoy the outdoors. Most cost increases for necessities are greater than the increases the federal government gives to people on social security.

Agency Response: The Commission has included new types of licenses to ensure that hunting and fishing stay affordable, but has ultimately determined that there are no available alternative methods of achieving the objective of the rulemaking.

Written Comment: Monday, Feb. 6, 2006, 9:46AM. The commenter opposes any changes that benefit nonresident hunters, specifically the identical fee for resident and nonresident junior tags. It is already difficult for the commenter's daughter to draw a tag. Nonresident hunters should be paying more than residents to discourage their applications and increase agency revenues when they are successful.

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Agency Response: The Department disagrees. When the Commission approved the junior tag fees, it did so to encourage youth hunting in this state. It did not distinguish between resident and nonresident. Also, under R12-4-114, nonresidents may not receive more than 10% of all hunt permit-tags per hunt for deer, elk, javelina, and turkey. This still leaves 90% of hunt tags for resident youth.

Written Comment: Monday, Feb. 6, 2006, 9:57AM. The commenter believes the fee increases are needed and appropriate, even though the new fees will make some tags unaffordable for his family. Game and Fish needs the increased funding for wildlife conservation.

Agency Response: Although the Department appreciates the support, the Commission has added new types of licenses to continue to make hunting and fishing more affordable, particularly the family hunting and fishing licenses. These licenses authorize parents and children to hunt and fish as a group at a reduced price, especially children.

Written Comment: Monday, Feb. 6, 2006, 10:03AM. A resident hunter opposes the new fees. Hunting in Arizona is more expensive than in New York or Virginia, and is becoming an activity only for the affluent. The commenter also implies that the new fees will counteract the Department's hunter recruitment and retention efforts.

Agency Response: The Department disagrees. The new fee for a resident Class G general hunting license is \$32.25 while the nonresident fees for a general hunting license in New York and Virginia are \$250 and \$80 respectively. In a cost comparison with other states, the Department's fees for residents were still significantly less than nonresident fees for comparable licenses and tags. The Department has been working on these fees before the legislative changes were approved in 2005 to determine what would be acceptable to the regulated community. The Commission has included several types of licenses to continue to make hunting and fishing affordable to the regulated community.

Written Comment: Monday, Feb. 6, 2006, 10:15AM. The commenter states that the fee increases seem quite extreme, and will make hunting for himself and his sons much more expensive, if drawn. The new fees might also force him to reevaluate his decision to go hunting, even if one of the many benefits is to provide food. Also, the new fees seem counterproductive to the Department's hunter retention program. He asks that the Department reconsider the new fees.

Agency Response: The Department disagrees. The Commission has included new types of licenses, particularly the family hunting and fishing licenses, to ensure that hunting and fishing continue to be affordable. The Department holds that the new fees will not significantly affect hunter retention and recruitment. As mentioned in the economic impact statement, although the Department anticipates there will be some buyer resistance, it will most likely be temporary.

Written Comment: This individual makes two comments, the first of which was sent Monday, Feb. 6, 2006, at 10:16AM. The commenter believes the agency is contradicting itself by making hunting unaffordable to a lot of families while at the same time trying to retain hunters and shooters. The rate increases hurt the very foundation the Department is trying to retain. The commenter also believes that it would almost be better to be a resident hunter in New Mexico or Colorado, because residents are charged approximately \$40. The Department also needs to look at guide license fees, and charge them what they charge for a hunt, around \$3000 to \$4000. The second comment from this individual was sent Feb. 6, 2006, at 10:17AM. The commenter asks what happened to the 1/20th of a percent sales tax.

Agency Response: The Department disagrees. The Commission has included new types of licenses, particularly the family hunting and fishing licenses, to ensure that hunting and fishing continue to be affordable. The Department holds that the new fees will not significantly affect hunter retention and recruitment. As mentioned in the economic impact statement, although the Department anticipates there will be some buyer resistance, it will most likely be temporary. In regard to nonresident license fees in New Mexico, the cost of most big game licenses and permits, if issued to nonresidents, is much more than \$40. Colorado's fees change annually with the consumer price index. The fee for an Arizona guide license was determined using the same equation applied to most other licenses, tags, and stamps. The Commission has determined that there are no available alternative methods of achieving the objective of the rule-making.

Written Comment: Monday, Feb. 6, 2006, 10:18AM. The commenter believes the new fees will alienate more of the core hunters of the state. The new fees will make hunting unaffordable and negatively affect hunter recruitment. Although higher fees are necessary, the new fees are very significant. Residents should only be charged a 3% increase in fees, which still exceeds the average person's annual take-home pay. They should not have to pay as high an amount as the new fees. Hunters must pay for gas, insurance, and medical costs too. The Department should cut expenses before it raises fees. Arizona is a western state but it seems the Commission is only hearing the liberal voices when making rulemaking decisions that affect the future of hunting in the state.

Agency Response: The Department disagrees. The agency and the Commission have been developing the fee increases before the 2005 legislative session that amended the authorizing statutes, and have worked to determine what fees would be acceptable to the regulated community. The Commission has included new types of licenses that will continue to make hunting and fishing affordable. Though the Department anticipates there will be some buyer resistance to some fees, it holds that it will be temporary. The Commission is hesitant to create a disproportionate difference between the resident and nonresident fees because it might be inconsistent with the purpose of federal legisla-

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tion that authorized reinstatement of the 10% nonresident cap. The Department holds that there are no available alternative methods of achieving the objective of the rulemaking.

Written Comment: Monday, Feb. 6, 2006, 10:52AM. The commenter's family would like to go on record that the fee increases are needed. The commenter does not know how the Department can function with less revenue and more work. The commenter hopes this will allow the Department to keep a wildlife manager in southeast Arizona, so that person can be paid at least the same if not more than other law enforcement officers and is not tempted to leave for another agency.

Agency Response: The Department appreciates the support, and makes every effort to ensure that the wildlife laws of this state are enforced.

Written Comment: Monday, Feb. 6, 2006, 10:55AM. A retired fishing enthusiast comments that the fees for a regular fishing license, an urban fishing license, a trout stamp, and parking fees at some lakes, all added up, can be insurmountable. The commenter states that it's getting more difficult to survive with costs rising for other things as well. In his opinion, the commenter feels if the new fees become effective, most people will just quit fishing.

Agency Response: The Department disagrees. Particular to this comment, the Commission has included a new Class L super conservation fishing license that provides the same privileges as a Class A general fishing license, a Class U urban fishing license, and a trout stamp for \$53 for residents. If this individual purchased each of these items separately, they would cost \$73.50.

Written Comment: Monday, Feb. 6, 2006, 10:57AM. The commenter states that the Department needs to seriously reconsider the premium (Class A and B) deer and elk tags, because it would let him, a middle class hunter, have better chances at being drawn for either species. He does not want to use his accumulated bonus points on a hunt that he does not really want. If the premium class eliminates a lot of meat hunters from the Kaibab or the Strip, and allows the commenter to use up his bonus points, so much the better.

Agency Response: The Department disagrees. The Commission did not want to propose separate classes of tags for deer and elk because the Commission believes all hunting opportunities are of equal value and quality.

Written Comment: Monday, Feb. 6, 2006, 11:04AM. The commenter feels if more funds are needed that they should be gained from citations. The new fees will only encourage more people to fish without a license, especially given the Department's sparse enforcement. The commenter asks why the agency doesn't have the same enforcement presence as is found on the Apache reservation, and implies the fees will not actually go to law enforcement, but are instead are some kind of ploy.

Agency Response: The Department disagrees. Although the Department is pursuing legislative changes to increase the amount that can be charged for a citation, one of the objectives of the rulemaking is to improve employee retention by ensuring that the Department's law enforcement officers are paid fairly.

Written Comment: Monday, Feb. 6, 2006, 11:07AM. The commenter reiterates a previous comment that the fee increases of over 40% are far too high. He feels a 10% increase to cover increasing expenses is adequate.

Agency Response: The Department disagrees. The objective of the rulemaking is to cover increasing operational and employee costs and to continue to effectively manage the state's wildlife resources. The Department has determined that there are no available alternative methods of achieving that objective.

Written Comment: Monday, Feb. 6, 2006, 11:08AM. The commenter suggests that increased license fees are playing a part in the decline of hunter participation and shooting sports.

Agency Response: The Department disagrees. Although license sales have steadily decreased over the years, in general, when fees increase, buyer resistance is only temporary.

Written Comment: Monday, Feb. 6, 2006, 11:09AM. The commenter finds it ludicrous that public comments are blatantly being ignored and the Department continues to do as it wishes without regard to public input. He wants the Department to explain why resident fees are being increased when nonresident fee increases are more appropriate. Resident fee increases seem inappropriate because there are not enough tags for resident hunters and because it is very difficult to draw a tag. He concludes that the Department is making hunting unaffordable for the general public.

Agency Response: The Department disagrees. Both the agency and the Commission have made every effort to receive and consider public comment, and to prescribe fees that will not only meet the objective of the rulemaking but to also continue to make hunting and fishing affordable. The Commission is hesitant to create a disproportionate difference between the resident and nonresident fees because it might be inconsistent with the purpose of federal legislation that authorized reinstatement of the 10% nonresident cap.

Written Comment: Monday, Feb. 6, 2006, 11:10AM. The commenter did not see nonresident fee increases in the public information distributed on this rulemaking. He hopes that there are increases to nonresidents and that they are eight to ten times higher than resident fee increases.

Agency Response: The Commission is increasing nonresident fees as well as resident fees. However, the Commission is hesitant to create a disproportionate difference between the resident and nonresident fees because it might be inconsistent with the purpose of federal legislation that authorized reinstatement of the 10% nonresident cap.

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Written Comment: Monday, Feb. 6, 2006, 11:13AM. The commenter states that the increase is a good thing and that he hopes it will be put to good use.

Agency Response: The Department appreciates the support.

Written Comment: Monday, Feb. 6, 2006, 11:45AM. The commenter did not see nonresident fee increases in the public information distributed on this rulemaking.

Agency Response: The Commission is increasing nonresident fees as well as resident fees.

Written Comment: Monday, Feb. 6, 2006, 11:53AM. The commenter implies that the new fees are counterproductive to hunter retention.

Agency Response: The Department disagrees. Although license sales have steadily decreased over the years, in general, when fees increase, buyer resistance is only temporary.

Written Comment: Monday, Feb. 6, 2006, 11:56AM. An Arizona native living in California questions whether the new fees will be a barrier to hunter retention. He cautions the Department that if fees get too high, it will encourage more people to hunt without licenses, particularly Asians.

Agency Response: The Department disagrees. Although license sales have steadily decreased over the years, in general, when fees increase, buyer resistance is only temporary. The Department has been working extensively to develop a fee structure that will generate necessary revenue and that is also acceptable to the regulated community.

Written Comment: Monday, Feb. 6, 2006, 11:58AM. An Arizona native feels that because nonresident outfitters caused such turmoil in the past, he is more apt for raising nonresident fees in much greater proportion than resident fees. He would also not favor any kind of break that would give resident or nonresident outfitters an advantage for their clients in the hunt permit-tag draw.

Agency Response: The Department disagrees. If the Commission raises fees for nonresidents to the point where the difference between the resident and nonresident fees becomes too great it might be inconsistent with the purpose of federal legislation that authorized reinstatement of the 10% nonresident cap.

Written Comment: Monday, Feb. 6, 2006, 12:06PM. The commenter feels the agency has lost its focus. The new fees are unreasonable, particularly the Class A tag prices for elk and deer. The commenter then states that the Department should consider raising nonresident tag prices to statutory caps before raising resident fees to an unreasonable amount. Lastly, he feels the Department's new fees are contradictory to its hunter retention efforts.

Agency Response: The Department disagrees. The objective of the new fees is to continue to effectively manage the state's wildlife and to ensure that it has the staff and resources to carry out its mission. The Commission did not include the Class A and B tags for deer and elk in the proposed rulemaking because the Commission believes all hunting opportunities are of equal value and quality. If the Commission raises fees for nonresidents to the point where the difference between the resident and nonresident fees becomes too great it might be inconsistent with the purpose of federal legislation that authorized reinstatement of the 10% nonresident cap.

Written Comment: Monday, Feb. 6, 2006, 12:21PM. The commenter finds it ironic that the Department is increasing fees in the same year it wants to increase hunter retention. Hunters will be discouraged from hunting if it becomes unaffordable. The new fees might lure a few new hunters, but they won't return, especially if the hunts have low success rates. If the Department is trying to increase revenue, it should charge separate fees suitable for the quality of the different type of hunts offered.

Agency Response: The Department disagrees. The Commission is hesitant to create a disproportionate difference between the resident and nonresident fees because it might be inconsistent with the purpose of federal legislation that authorized reinstatement of the 10% nonresident cap. Although license sales have steadily decreased over the years, in general, when fees increase, buyer resistance is only temporary. The Commission did not include the Class A and B tags for deer and elk in the proposed rulemaking because the Commission believes all hunting opportunities are of equal value and quality.

Written Comment: Monday, Feb. 6, 2006, 12:22PM. The commenter indicates that the new fees are contradictory to the Department's hunter retention efforts.

Agency Response: The Department disagrees. Although license sales have steadily decreased over the years, in general, when fees increase, buyer resistance is only temporary.

Written Comment: Monday, Feb. 6, 2006, 12:39PM. An avid hunter and parent emphatically states that she and her children are at odds with the equal fees for resident and nonresident junior tags. She feels this will vastly reduce her children's chances of being drawn for a tag because it will encourage a large number of nonresident youth to apply. She feels the equal fee is negligent and will tremendously discourage resident youth hunting. She asks "why should [resident parents] put [their children] in a youth hunt now when they really will not ever have a fair chance?"

Agency Response: The Department disagrees. When the Commission approved the junior tag fees, it did so to encourage youth hunting in this state. It did not distinguish between resident and nonresident. Also, under R12-4-114, nonresidents may not receive more than 10% of all hunt permit-tags per hunt for deer, elk, javelina, and turkey. This still leaves 90% of hunt tags for resident youth.

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Written Comment: Monday, Feb. 6, 2006, 1:30PM. The commenter would rather the Department raise fees to non-residents who can afford it instead of residents, because the new fees will make it harder for blue collar workers to participate in outdoor heritage events with their families, including himself.

Agency Response: The Department disagrees. The Commission has included new licenses that will continue to make hunting and fishing affordable, particularly the family hunting and fishing licenses. If the Commission creates a disproportionate difference between the resident and nonresident fees because it might be inconsistent with the purpose of federal legislation that authorized reinstatement of the 10% nonresident cap.

Written Comment: Monday, Feb. 6, 2006, 1:31PM. The commenter asks why the Department doesn't show the new fee for a Class G general hunting license. He also asks if the fee will stay the same.

Agency Response: The Department has listed the cost of a Class G general hunting license. The cost of a resident hunting license will increase from \$25.50 to \$32.25. The cost of a non-resident hunting license will increase from \$113.50 to \$151.25.

Written Comment: Monday, Feb. 6, 2006, 1:43PM. A disabled hunter living on a fixed income comments that although he does not mind costs to hunt and fish in Arizona, he insinuates that he will not be able to afford to continue to hunt.

Agency Response: The Department disagrees. The Department has been working on the new fee structure since before the beginning of the 2005 legislative session in which the authorizing statutes were made to determine what fees would be acceptable to the regulated community and would meet the Department's operational expenses. The Commission has also developed several different types of licenses to continue to make hunting more affordable, like the super conservation license.

Written Comment: Monday, Feb. 6, 2006, 2:09PM. An avid hunter states that he agrees with many that the quality of hunting has decreased to the point where it is no longer worth the cost of the license. If the new fees are adopted, he will stop purchasing a license.

Agency Response: The Department disagrees. The Department has been working on the new fee structure since before the beginning of the 2005 legislative session in which the authorizing statutes were made to determine what fees would be acceptable to the regulated community and would meet the Department's operational expenses. These operational expenses include maintaining quality hunting opportunities in Arizona. The Department has determined that fee increases are the most effective method of achieving this objective. The Commission has also developed several different types of licenses to continue to make hunting more affordable, like the super conservation license.

Written Comment: Monday, Feb. 6, 2006, 2:21PM. The commenter does not support the new fees, because they will make hunting unaffordable for himself and his family. Despite the fees for junior tags, without parental interest, they will be fruitless. The new fees will also make hunter recruitment and retention more difficult and will result in less revenue from licenses purchases and outdoor equipment sales taxes. Unless the Department's plan to improve the hunt permit-tag draw odds is to make hunting unaffordable for many, it would be preferable that the wealthy support the agency through special big game permit-tag auctions.

Agency Response: The Department disagrees. The Department has been working on the new fee structure since before the beginning of the 2005 legislative session in which the authorizing statutes were made to determine what fees would be acceptable to the regulated community and would meet the Department's operational expenses. The Commission has also developed several different types of licenses to continue to make hunting more affordable, like the super conservation license, and family hunting and fishing licenses that allow families to participate in hunting and fishing at a reduced cost. The Department currently operates special big-game permit auctions, and maintains that while they do generate revenue they are not adequate to meet all of the Department's operational needs.

Written Comment: Monday, Feb. 6, 2006, 3:27PM. The commenter declares emphatically that hunter retention and recruitment is deteriorating due to the Department's continuously rising fees, which is grossly making hunting unaffordable for the working class.

Agency Response: The Department disagrees. The Department has been working on the new fee structure since before the beginning of the 2005 legislative session in which the authorizing statutes were made to determine what fees would be acceptable to the regulated community and would meet the Department's operational expenses. The Department has determined that the fee increase is the most effective available method to meet operational expenses. Operational expenses include the ability to provide quality hunting opportunities, which is essential to hunting recruitment and retention. The Commission has also developed several different types of licenses to continue to make hunting more affordable, like the super conservation license.

Written Comment: Monday, Feb. 6, 2006, 3:33PM. The commenter states that guides should pay an increased fee for their permit that equals the amount they receive from hunters for their services. A well placed fee would help with the Department's revenue and deter the amateur guide.

Agency Response: The Department disagrees. When calculating fee increases the same formula was applied to all licenses, including guide licenses. The Department has determined that the most effective way to increase fees in a fair manner was to apply the same formula to all licenses and tags.

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Written Comment: Monday, Feb. 6, 2006, 4:01PM. The commenter states that he is very disappointed that fees are increasing again, especially given the declining game conditions, continued loss of hunting land near the metropolitan areas, road closures, increased costs of equipment and necessities, and the Commission's statement that raised statutory fee ceilings did not necessarily mean higher fees. The Department should provide a quality product or service before it raises fees, like in the private sector. Otherwise, hunters may pursue other activities.

Agency Response: The Department disagrees. The Department has been working on the new fee structure since before the beginning of the 2005 legislative session in which the authorizing statutes were made to determine what fees would be acceptable to the regulated community and would meet the Department's operational expenses. These operational expenses include maintaining quality hunting opportunities in Arizona. Operational expenses include improving game conditions and addressing access issues. The Department has determined that fee increases are the most effective method of achieving this objective. The Commission has also developed several different types of licenses to continue to make hunting more affordable, like the super conservation license.

Written Comment: Monday, Feb. 6, 2006, 4:06PM. The commenter states that he and his family will no longer be able to hunt if the fees go up, and asks that they not be raised.

Agency Response: The Department disagrees. The Department has been working on the new fee structure since before the beginning of the 2005 legislative session in which the authorizing statutes were made to determine what fees would be acceptable to the regulated community and would meet the Department's operational expenses. The Commission has also developed several different types of licenses to continue to make hunting more affordable, like the family hunting and fishing licenses. The Commission also established discounted youth tags on big game species.

Written Comment: Monday, Feb. 6, 2006, 4:07PM. The commenter states that the new fees for the resident Class A general fishing license, the resident Class F combination hunting and fishing license, and the youth licenses seem reasonable. However, the fees for the resident elk and deer tags will make hunting unaffordable for those species, and negatively affect hunter retention.

Agency Response: The Department disagrees. The Department has been working on the new fee structure since before the beginning of the 2005 legislative session in which the authorizing statutes were made to determine what fees would be acceptable to the regulated community and would meet the Department's operational expenses. The Department has determined that fee increases are the most effective method to generate revenue needed to provide quality hunting and fishing experiences.

Written Comment: Received Monday, Feb. 6, 2006 by telephone. A nonresident retiree living on a fixed income asks the Commission to consider the average person. Although he takes his grandchildren hunting, he is concerned that they won't be able to afford it in the future. He suggests a 10% increase of all fees every year instead. The Department will lose revenue if hunting becomes unaffordable for nonresidents.

Agency Response: The Department disagrees. The Department has been working on the new fee structure since before the beginning of the 2005 legislative session in which the authorizing statutes were made to determine what fees would be acceptable to the regulated community and would meet the Department's operational expenses. The Commission has also developed several license and tag fees specifically designed to provide hunting opportunities to youth hunters. The Department has determined that the only available method for meeting operational expenses is with the fee increase made under this rulemaking, and that non-resident prices are comparable to other western states.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

None

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15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Section

R12-4-102. Fees for Licenses, Tags, Stamps, and Permits

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-102. Fees for Licenses, Tags, Stamps, and Permits

An individual who purchases a license, tag, stamp, or permit listed in this Section shall pay all applicable fees at the time of application, or pay fees as prescribed by the Director under R12-4-115.

Hunting and Fishing License Fees		<u>Fees effective for licenses, tags, stamps, and permits to be used beginning in 2007</u>
Class A, General Fishing License		
· Resident	\$18.00	<u>\$23.50</u>
· Nonresident Under A.R.S. § 17-333(A)(1), the fee for this license issued in November or December of the year for which the license is valid is half price; that includes half of the surcharge prescribed as authorized by A.R.S. § 17-345.	\$51.50	<u>\$88.00</u>
Class B, Four-month Fishing License		
· Nonresident	\$37.50	<u>\$39.75</u>
Class C, Five-day Fishing License		
· Nonresident	\$26.00	<u>\$32.00 + \$9.00 for each additional day</u>
Class D, One-day Fishing License		
· Resident or Nonresident	\$12.50	<u>\$16.25 + \$8.00 for each additional day</u>
· <u>Nonresident</u>		<u>\$17.25 + 9.00 for each additional day</u>
Class E, Colorado River Only Fishing License		
· Nonresident	\$42.50	<u>\$48.75</u>
Class F, Combination Hunting and Fishing License		
· Resident Adult	\$44.00	<u>\$54.00</u>
· Nonresident Adult	\$177.50	<u>\$225.75</u>

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· Resident or Nonresident Youth. Fee applies before and through the calendar year of the applicant's 20th birthday.	\$25.50	<u>\$26.50</u>
Class G, General Hunting License		
· Resident	\$25.50	<u>\$32.25</u>
· Nonresident	\$113.50	<u>\$151.25</u>
Class H, Three-day Hunting License		
· Nonresident	\$51.50	<u>\$61.25</u>
· Resident Youth Group Two-day Fishing License	\$25.00	<u>\$25.00</u>
Class I, Resident Family Fishing License		
· For primary adult	\$28.50	<u>\$39.25</u>
· For one additional adult in the immediate family, as prescribed in A.R.S. § 17-333(A)(12)	+ \$22.80	+ <u>\$31.40</u>
· For any additional children child in the immediate family, as prescribed in A.R.S. § 17-333(A)(12)	+ \$2.00 per child	+ <u>\$2.00 per child</u>
Class J Resident Family Hunting License		
· For primary adult		<u>\$32.25</u>
· For one additional adult in the immediate family, as prescribed in A.R.S. § 17-333		+ <u>25.80</u>
· For any child in the immediate family, as prescribed in A.R.S. § 17-333		+ <u>\$15.00 per child</u>
Class K Combination Resident Family Hunting and Fishing License		
· For primary adult		<u>\$54.00</u>
· For one additional adult in the immediate family, as prescribed in A.R.S. § 17-333		+ <u>\$43.20</u>
· For any child in the immediate family, as prescribed in A.R.S. § 17-333		+ <u>\$20.00 per child</u>
Class L Super Conservation Fishing License		
· Resident		<u>\$53.00</u>
· Nonresident		<u>\$63.00</u>
Class M Super Conservation Hunting License		
· Resident		<u>\$118.00</u>
Class N Combination Super Conservation Hunting and Fishing License		
· Resident		<u>\$163.00</u>
Class U, Urban Fishing License		
· Resident or Nonresident	\$16.00	<u>\$18.50</u>
Hunt Permit-tag Fees		
Antelope		
· Resident	\$65.00	<u>\$77.50</u>

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· Nonresident	\$325.00	<u>\$477.50</u>
Bear		
· Resident	\$14.50	<u>\$22.25</u>
· Nonresident	\$200.00	<u>\$237.50</u>
Bighorn Sheep		
· Resident	\$195.00	<u>\$265.00</u>
· Nonresident	\$1,000.00	<u>\$1,400.00</u>
Buffalo		
· Adult Bulls or Any Buffalo		
· Resident	\$750.00	<u>\$1,087.50</u>
· Nonresident	\$3,750.00	<u>\$5,444.75</u>
· Adult Cows		
· Resident	\$450.00	<u>\$652.00</u>
· Nonresident	\$2,250.00	<u>\$3,255.25</u>
· Yearling		
· Resident	\$240.00	<u>\$355.25</u>
· Nonresident	\$1,200.00	<u>\$1,747.25</u>
· Yearling or Cow		
· Resident	\$450.00	<u>\$652.00</u>
· Nonresident	\$2,250.00	<u>\$3,255.25</u>
Deer and Archery Deer		
· Resident	\$19.50	<u>\$34.75</u>
· Nonresident	\$125.50	<u>\$225.25</u>
· <u>Junior, resident and nonresident</u>		<u>\$25.00</u>
Elk		
· Resident	\$78.00	<u>\$114.00</u>
· Nonresident	\$400.00	<u>\$587.50</u>
· <u>Junior, resident and nonresident</u>		<u>\$50.00</u>
Javelina and Archery Javelina		
· Resident	\$12.50	<u>\$21.25</u>
· Nonresident	\$70.00	<u>\$97.50</u>
· <u>Junior, resident and nonresident</u>		<u>\$15.00</u>
Mountain Lion		
· Resident	\$10.00	<u>\$14.50</u>
· Nonresident	\$200.00	<u>\$225.00</u>
Turkey and Archery Turkey		

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· Resident	\$11.00	<u>\$18.00</u>
· Nonresident	\$50.50	<u>\$70.25</u>
· <u>Junior, resident and nonresident</u>		<u>\$10.00</u>
Sandhill Crane		
· Resident or Nonresident	\$5.00	<u>\$7.50</u>
Nonpermit-tag and Restricted Nonpermit-tag Fees		
Antelope		
· Resident	\$65.00	<u>\$77.50</u>
· Nonresident	\$325.00	<u>\$477.50</u>
Bear		
· Resident	\$14.50	<u>\$22.25</u>
· Nonresident	\$200.00	<u>\$237.50</u>
Bighorn Sheep		
· Resident	\$195.00	<u>\$265.00</u>
· Nonresident	\$1,000.00	<u>\$1,400.00</u>
Buffalo		
· Adult Bulls or Any Buffalo		
· Resident	\$750.00	<u>\$1,087.50</u>
· Nonresident	\$3,750.00	<u>\$5,444.75</u>
· Adult Cows		
· Resident	\$450.00	<u>\$652.00</u>
· Nonresident	\$2,250.00	<u>\$3,255.25</u>
· Yearling		
· Resident	\$240.00	<u>\$355.25</u>
· Nonresident	\$1,200.00	<u>\$1,747.25</u>
· Yearling or Cow		
· Resident	\$450.00	<u>\$652.00</u>
· Nonresident	\$2,250.00	<u>\$3,255.25</u>
Deer and Archery Deer		
· Resident	\$19.50	<u>\$34.75</u>
· Nonresident	\$125.50	<u>\$225.25</u>
· <u>Junior, resident and nonresident</u>		<u>\$25.00</u>
Elk		
· Resident	\$78.00	<u>\$114.00</u>
· Nonresident	\$400.00	<u>\$587.50</u>
· <u>Junior, resident and nonresident</u>		<u>\$50.00</u>

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Javelina and Archery Javelina		
· Resident	\$12.50	<u>\$21.25</u>
· Nonresident	\$70.00	<u>\$97.50</u>
· <u>Junior, resident and nonresident</u>		<u>\$15.00</u>
Mountain Lion		
· Resident	\$10.00	<u>\$14.50</u>
· Nonresident	\$200.00	<u>\$225.00</u>
Turkey and Archery Turkey		
· Resident	\$11.00	<u>\$18.00</u>
· Nonresident	\$50.50	<u>\$70.25</u>
· <u>Junior, resident and nonresident</u>		<u>\$10.00</u>
Sandhill Crane		
· Resident or Nonresident	\$5.00	<u>\$7.50</u>
Stamps and Special Use Permit Fees		
Arizona Colorado River Special Use Permit Stamp. For use by California fishing license holders, resident or nonresident.	\$3.00	<u>\$3.00</u>
Arizona Colorado River Special Use Permit Stamp. For use as prescribed by R12-4-312.	\$3.00	<u>\$3.00</u>
Arizona Lake Powell Stamp. For use by resident Utah licensees.	\$3.00	<u>\$3.00</u>
Bobcat Permit Tag. For resident or nonresident.	\$2.00	<u>\$3.00</u>
State Waterfowl Stamp. Validates a hunting license to allow the license holder to take waterfowl as prescribed in R12-4-203.	\$7.50	<u>\$8.75</u>
State Migratory Bird Stamp, as prescribed in A.R.S. § 17-333.03, resident or nonresident. Validates a hunting license to allow the license holder to take migratory game birds as prescribed in R12-4-203.	\$3.00	<u>\$4.50</u>
Trout Stamp. Validates a Class A license to allow the license holder to take trout.		
· Resident	\$10.50	<u>\$15.75</u>
· Nonresident	\$49.50	<u>\$57.75</u>
Two-Pole Stamp, resident or nonresident. Validates a fishing license to allow the license holder to engage in simultaneous fishing, as defined in R12-4-101.	The fee for a two-pole stamp shall be \$4.00 until September 1, 2006. Afterwards, the fee shall be \$5.00.	<u>\$6.00</u>
Unit 12A (North Kaibab) Habitat Management Stamp, resident or nonresident. Sikes Act stamp, validates a hunting license to allow the license holder to take deer in unit 12A as prescribed by R12-4-204.	\$15.00	<u>\$15.00</u>

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Other License Fees		
Game Bird Field Trial License	\$5.00	<u>\$6.00</u>
Game Bird Hobby License	\$5.00	<u>\$5.00</u>
Game Bird Shooting Preserve License	\$100.00	<u>\$115.00</u>
Fur Dealer's License	\$100.00	<u>\$115.50</u>
Guide License		
· Resident or Nonresident	\$100.00	<u>\$300.00</u>
License Dealer's License	\$75.00	<u>\$100.00</u>
License Dealer's Outlet License	\$25.00	<u>\$25.00</u>
Live Bait Dealer's License	\$30.00	<u>\$35.00</u>
Private Game Farm License	\$40.00	<u>\$57.50</u>
Sport Falconry License (3-year license)	\$75.00	<u>\$87.50</u>
Taxidermist License	\$50.00	<u>\$150.00</u>
Trapping License		
· Resident	\$10.00	<u>\$30.00</u>
· Nonresident	\$50.00	<u>\$275.00</u>
· Resident Juvenile	\$10.00	<u>\$10.00</u>
White Amur Stocking and Holding License		
· Non-business. Under R12-4-424, an individual that holds a non-business white amur stocking and holding license does not pay the required fee if renewing the license.	\$200.00	<u>\$250.00</u>
· Business	\$200.00	<u>\$250.00</u>
Zoo License	\$100.00	<u>\$115.00</u>
Administrative Fees		
Duplicate Fee. Duplicates are not issued for Trout Stamps, Arizona Colorado River Special Use Permits, Arizona Colorado River Special Use Permit Stamps, Arizona Lake Powell Stamps, State Migratory Bird Stamps, or State Waterfowl Stamps.	\$3.00	<u>\$4.00</u>
Permit Application Fee.	\$5.00	<u>\$7.50</u>

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R06-110]

PREAMBLE

1. Sections Affected

R20-5-1001
R20-5-1002
R20-5-1002
R20-5-1003
R20-5-1003
R20-5-1004
R20-5-1004
R20-5-1005
R20-5-1005
R20-5-1006
R20-5-1006
R20-5-1007
R20-5-1007
R20-5-1008
R20-5-1008
R20-5-1009

Rulemaking Action

Amend
Repeal
New Section
Renumber
New Section
Renumber
Amend
Renumber
Amend
Renumber
Amend
Renumber
Amend
Renumber
Amend
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 23-107(A)(1), 23-350, and 23-361

Implementing statute: A.R.S. §§ 23-107(A)(3), 23-356, 23-357, 23-358, and 23-359

3. The effective date of the rules:

June 4, 2006

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 5131, December 2, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 5184, December 9, 2005

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Patricia K. Husbands, Esq.
Legal Division
Industrial Commission of Arizona

Address: 800 W. Washington St., Suite 303
Phoenix, AZ 85007

Telephone: (602) 542-5781

Fax: (602) 542-6783

E-mail: phusbands@ica.state.az.us

6. An explanation of the rule, including the agency's reason for initiating the rule:

Employees may file a claim with the Industrial Commission of Arizona, Department of Labor, for unpaid wages of \$2,500.00 or less. When an employee files a claim with the Department, the Department notifies the employer of the claim and requests the employer submit information concerning the claim. Depending on the information submitted by the employee and employer, the Department may perform additional investigation concerning the claim. After investigation of the claim, the Department issues a written determination stating whether the employer owes the wages claimed or that no determination can be made. An employer who does not comply with the Department's determination within ten days after the determination becomes final is liable for triple the amount of the unpaid wages owed.

The existing rules were made in 1988. Since that time, practices and procedures have changed in the Department of Labor and the format and style changes for rules have also changed. The Commission has initiated this rulemaking to amend existing rules and to make new rules that will:

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1. Update existing rules to conform to current rulemaking format and style requirements;
 2. Update existing rules to conform to the Secretary of State's format;
 3. Conform the rules to existing practices;
 4. Promote ease of use and improved understanding of the rules; and
 5. Reduce the time period for the wage claim process by changing the time from 15 calendar days to 10 calendar days in order to expedite the Department's determination concerning whether wages are due or if a dispute exists which cannot be resolved by the Department's investigation.
7. **A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The Commission did not review any study relevant to the rules.
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
9. **The summary of the economic, small business, and consumer impact:**
The rulemaking will not result in any measurable economic impact on small businesses or consumers. The economic impact to the Commission as a result of these rules will be minimal costs associated with printing the rules in a booklet for distribution to the public.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff.
11. **A summary of the comments made regarding the rule and the agency response to them:**
No comments were made.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable
13. **Incorporations by reference and their location in the rules:**
Not applicable
14. **Was this rule previously made as an emergency rule?**
No.
15. **The full text of the rules follows:**

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 10. WAGE CLAIMS

Section

- R20-5-1001. Definitions
R20-5-1002. ~~Filing of Claim~~ Forms
R20-5-1003. ~~Filing Requirements; Time for Filing; Computation of Time~~
~~R20-5-1003~~ R20-5-1004. Investigation of Claim
~~R20-5-1004~~ R20-5-1005. Mediation of Disputes
~~R20-5-1005~~ R20-5-1006. Dismissal of Claim
~~R20-5-1006~~ R20-5-1007. ~~Determination of Claim~~ Notice of Right of Review
~~R20-5-1007~~ R20-5-1008. Payment of Claim
R20-5-1009. Service of Determinations, Notices, and Other Documents

ARTICLE 10. WAGE CLAIMS

R20-5-1001. Definitions

In this Article, unless the context otherwise requires:

1. "Claim" means a wage claim pursuant to A.R.S. § 23-356.
2. "Claimant" means ~~a person~~ an individual who files a ~~wage~~ claim.

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3. "Day" means calendar day.
- 3-4. "Department" means the Labor Department of the Industrial Commission of Arizona.
- 4-5. "Determination" means ~~an action~~ a finding by the Department pursuant to under A.R.S. § 23-357 in which the Department finds that a wage claim is either valid or invalid or that the Department cannot resolve the dispute.
- 5-6. "Director" means the Director of the Department.
- 6-7. "Dismissal" means an action by the Department in which the Department ~~makes no determination regarding the validity of the claim~~ dismisses the claim and refers the claimant to other statutory remedies.
- 7-8. "Notice" or "notification" when made by the Department or the Director means a written communication transmitted to the employer or claimant, or both, by ~~ordinary~~ regular mail.

R20-5-1002. Filing of Claim Forms

~~A.~~ All wage claims shall be filed on forms approved by the Department which are incorporated herein by reference and on file with the Office of the Secretary of State. The claim shall contain the claimant's complete name, address and telephone number and the complete name, address and telephone number of the employer. The claim shall contain the dollar amount of the wages claimed and the nature and date of the adverse wage action. The claim shall be signed by the claimant.

The following forms are available upon request from the Department or from the Industrial Commission's Internet web site at www.ica.state.az.us:

1. Wage claim. When making a claim, a claimant shall provide the following information to the Department:
 - a. Claimant's name, address, telephone number, and date of birth;
 - b. Employer's name, address, telephone number, and description of business;
 - c. Claimant's dates of employment, position, and pay;
 - d. The amount of the wages claimed and whether the claimant requested payment of the wages from employer; and
 - e. Claimant's signature and signature date.
2. Employer response. The employer responding to a claim shall provide the following information to the Department:
 - a. Employer's name, address, telephone number, and description of business;
 - b. Claimant's dates of employment, position, and pay;
 - c. Whether claimant is owed any wages, and, if so, employer's reason for nonpayment; and
 - d. Employer's signature and signature date.

~~B.~~ The date the wage claim form is actually received by the Department shall be considered the date of filing the claim.

~~C.~~ If the claim does not contain the information required in subsection (A), the Department will contact the claimant by telephone or return the claim to the claimant by ordinary mail for completion of the claim. The claimant shall return the completed claim to the Department within 15 days of the Department's notification.

~~D.~~ A copy of the claim, together with an employer response form incorporated herein by reference and on file with the Office of the Secretary of State shall be sent by ordinary mail to the employer listed on the claim.

R20-5-1003. Filing Requirements; Time for Filing; Computation of Time

~~A.~~ A claimant shall file a claim with the Department within one year of the date of the accrual of the claim.

~~B.~~ In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period and Saturdays, Sundays, and legal holidays are included in the computation of time.

~~C.~~ The date of filing of the claim is the date the claimant's wage claim form is received by the Department.

~~D.~~ The Department shall deem a form, document, instrument, or other written record filed at the Tucson office as filed at the Phoenix office for the purpose of computing time.

~~E.~~ An individual filing a form or document related to a claim shall legibly fill out the form or document in ink or type.

~~F.~~ If the wage claim form received from a claimant does not include the information required by R20-5-1002(1), the Department shall return the wage claim form to the claimant by regular mail with a request that the claimant provide the required information and return the completed wage claim form to the Department within 10 days from the date of the Department's request. If the Department does not receive the completed wage claim form within 10 days, the Department shall not initiate an investigation of the claim and the Department shall consider the claim withdrawn without prejudice. The claimant may re-file a withdrawn wage claim with the information required by R20-5-1002(1), if the claim is re-filed within one year of the date of the accrual of the claim.

~~R20-5-1003~~ R-20-5-1004. Investigation of Claim

~~A.~~ The employer ~~The Department~~ shall respond to the claim on the employer response form provided by the Department no later than 15 days after the Department mails the employer a copy of the claim by ordinary mail: mail a copy of a claimant's wage claim form within 10 days after the Department's receipt of the form to the employer listed on the wage claim, with a request that the employer complete and file the employer response form within 10 days of the date of the Department's mailing.

~~B.~~ If the employer fails or refuses to submit a response to the claim ~~Department does not receive the employer response form in accordance with~~ under subsection (A), the Department ~~will~~ shall ~~notify~~ provide written notice to the employer in writing stating that the employer must pay the amount claimed or submit file a written response to the wage claim within 15

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- 10 days of the date of the Department's notification. ~~written notice.~~
- C. If the ~~employer's~~ employer timely files the employer response under subsection (A), but the response is incomplete or lacks documentation, the ~~employer~~ Department shall ~~submit further~~ mail the employer a notice requesting that the employer file the required information or documentation within ~~15~~ 10 days of the date of the Department's notification of the deficiency to the employer. notice. If the ~~employer fails or refuses to submit~~ Department does not receive the required information or documentation required by the Department, within 10 days, the Department ~~will~~ shall make a determination ~~regarding~~ of the claim based on the evidence in the file.
- D. If the employer's response ~~protests~~ disputes the amount of wages claimed by the claimant, the Department shall ~~send~~ mail a copy of the employer's response to the claimant and ~~give offer~~ the claimant the opportunity to file a written reply to the employer's response within 15 10 days from the date of ~~notification by the Department's mailing by ordinary mail to reply to the employer's response.~~ If the ~~claimant fails or refuses to respond,~~ Department does not receive claimant's reply within 10 days, the Department ~~will~~ shall make a determination of the claim based on the evidence in the file.
- E. If the employer fails or refuses to pay the amount claimed or submit a written response to the claim in accordance with subsection (B), the Department ~~will~~ shall make a determination of the claim based on the evidence in the file.
- F. Upon request from the Department, and if necessary to complete the Department's investigation, ~~The~~ the claimant, the employer, or both parties, shall submit further written information or ~~shall~~ meet with the Director or his designee, ~~if necessary, to complete the Department's investigation of a claim.~~ Except for statements made during settlement, mediation, or ~~an informal conference~~ conference, the Director or his designee shall administer oaths for the purpose of taking affidavits and shall tape record the meeting.
- G. Upon completion of its investigation, the Department shall notify the parties to the claim of the Department's determination in writing.

~~R20-5-1004~~R20-5-1005. Mediation of Disputes

- A. During the investigation of a claim, the Department ~~is authorized to~~ may mediate and conciliate a dispute between the claimant and the employer.
- B. If mediation results in an informal resolution of the claim, the Director ~~or the Director's designee will~~ shall prepare and ~~execute~~ ensure execution of documents providing for the ~~ease~~ resolution ~~of and close the file~~ claim.

~~R20-5-1005~~R20-5-1006. Dismissal of Claim

- A. The Department ~~will~~ shall dismiss the ~~a~~ claim if:
- ~~If an incomplete claim is not responded to by the claimant within 15 days of the Department's return of the claim by ordinary mail or if a~~ The claim is filed more than one year after the date of the accrual of the wages claimed claim, or the amount of wages claimed exceeds \$2,500.
 - ~~If the Department's investigation of the claimant's evidence reveals no possible violation of A.R.S. § 23-350 et seq.~~ The claimant does not comply with R20-5-1003(F).
 - ~~If the Department's investigation reveals that the claimant has filed a civil action regarding the same adverse wage action which is the subject of the claim. The amount of wages claimed exceeds \$2,500.00.~~
 - ~~If the~~ The Department's investigation reveals that the employer listed on the claim is in bankruptcy. ~~of the claimant's evidence reveals no possible violation of A.R.S. § 23-350 et seq.~~
 - ~~If the Department is unable to locate the employer based on the information provided by the claimant. The claimant has filed a civil action regarding the same claim.~~
 - ~~If the Department's investigation reveals that the wages in question have been withheld from the claimant pursuant to the claimant's prior written authorization. The employer listed on the claim is in bankruptcy.~~
 - The Department is unable to locate the employer based on the information provided by the claimant, or
 - The wages in question have been withheld from the claimant pursuant to the claimant's prior written authorization.
- B. All notices of dismissal will notify the claimant of the availability of other remedies. The Department shall send a notice of dismissal to the claimant and, Except except as provided in subsections (A)(1) through (A)(3) and (7), the Department will shall send a copy of the notice of dismissal to the employer. Notices of dismissal shall notify the claimant of the availability of other remedies.

~~R20-5-1006~~R20-5-1007. Determination of Claim Notice of Right of Review

- A. All ~~determinations~~ A determination issued under A.R.S. § 23-357 shall include a notice will notify informing the parties of their right to seek review ~~pursuant to~~ under A.R.S. § 23-358 and § 12-901 et seq.
- B. All ~~determinations~~ The Department shall serve a determination will be served on the parties by ~~ordinary~~ regular mail.

~~R20-5-1007~~ R20-5-1008. Payment of Claim

- A. Payments of wage claims The Department shall send any payment of a wage claim received by the Department ~~will promptly be sent to the claimant by ordinary certified mail, accompanied by a return receipt form for signature by the claimant and returnable to the Department. requested.~~
- ~~B.~~ The Department will send a copy of the signed receipt to the employer.
- ~~C.B.~~ If the Department discovers that payment of a wage claim is alleged to have been made directly to the claimant, the

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Department ~~will~~ shall verify ~~such~~ the payment by sending a letter to the claimant by regular mail. If the claimant does not respond to the Department's letter within ~~45~~ 10 days of the date of the Department's letter, the Department ~~will~~ shall deem the claim to have been paid.

~~D.C.~~ Payment of a partial amount of a wage claim does not preclude the Department from completing its investigation of the balance of the claim.

~~E.D.~~ In the case of a determination and directive for payment issued by the Department ~~pursuant to~~ under A.R.S. § 23-357, the Department shall, if the employer agrees and, with the written consent of the claimant, enter into a payment agreement with the employer for payment of the amount of wages found to be owed the claimant.

R20-5-1009. Service of Determinations, Notices, and Other Documents

A. A determination, notice, or other document required by this Article or other law to be mailed or served upon a party, shall be made upon the party, or, if represented by legal counsel, the party's legal counsel. Service upon legal counsel is considered service upon the party.

B. Service may be made and is deemed complete by depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, or by personal delivery upon the party.